

No. 10932

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

UNITED STATES OF AMERICA,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy of the  
Estate of El Camino Refining Company, STATE OF  
CALIFORNIA and UNIVERSAL CONSOLI-  
DATED OIL COMPANY,

Appellees.

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## TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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**FILED**

FFR 24 1944

**PAUL P. O'BRIEN,**  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Los Angeles 13, Calif. [1\*]

In the District Court of the United States  
Southern District of California  
Central Division  
No. 40599 BH

In Proceedings for the Reorganization of a Corporation  
Under Chapter X.

In the Matter of

EL CAMINO REFINING COMPANY,  
Debtor.

### PETITION

To the Honorable Judges of the District Court of the  
United States, for the Southern District of California:

The petition of El Camino Refining Company respectfully represents:

#### I

That your petitioner is unable to pay its debts as they mature.

#### II

That your petitioner is a corporation organized and existing under the laws of the State of California and is a corporation which could become a bankrupt under the Act of Congress relating to Bankruptcy and is not a municipal, insurance, or banking corporation, or a building and loan association, or a railroad corporation authorized to file a petition under §77 of said Act.

Your petitioner now has, and for the six (6) months next preceding the filing of this petition, has had its principal assets and place of business near Los Alamitos, in



the County of Orange, State of California, within the territorial jurisdiction of this Court.

### III

The nature of the business of your petitioner is the operation of an oil refinery which is engaged in the refining of petroleum [2] products.

### IV

That the assets, liabilities, capital stock and financial condition of your petitioner are as follows:

(a) Assets. The assets of your petitioner as of May 8, 1942, consisted of cash on hand, accounts and contracts receivable, merchandise inventory, stocks and other investments, land, and refinery furniture, fixtures and equipment, all of an aggregate fair value of One Hundred Twenty-Five Thousand (\$125,000.00) Dollars.

(b) Liabilities. The liabilities of your petitioner, exclusive of its capital stock, as of May 8, 1942, consisted of:

(1) Accounts Payable	\$15,184.29
(2) Notes Payable in favor of the Universal Consolidated Oil Co., and secured by a Mortgage on the principal assets of this corporation	8,000.00
(3) Contracts payable	875.33
(4) Accrued Compensation and Liability Insurance	42.64
(5) Reserve for F.O.A.B.	80.54
(6) Reserve for State and Federal Unemployment Commission	180.93
(7) State Gasoline Tax Payable	7,193.52
(8) Federal Gasoline Tax Payable	39,498.99
(9) Sales Tax Payable	1.78

(c) Capital Stock. Your petitioner has an authorized capital stock of five hundred thousand (500,000) shares of the par value of \$1.00 per share, of which seventy-one thousand, five hundred five (71,505) shares are issued and outstanding.

(d) Financial Condition. Your petitioner has insufficient cash with which to pay its past due obligations.

The United States Government has agreed to an amortized plan of payment of its claim on account of unpaid gasoline sales tax but your petitioner is unable to meet the payments required by the [3] Government, and it is unable to pay its gasoline tax to the State of California.

## V

There are no proceedings pending affecting the property of your petitioner known to it other than a possible lien that may have been placed against said property for unpaid gasoline sales tax due the United States.

## VI

No plan of reorganization, readjustment, or liquidation affecting the property of your petitioner is pending either in connection with or without any judicial proceeding.

## VII

The specific facts showing the need for relief under Chapter X of said Act are as follows: Your petitioner is solvent, for your petitioner has assets of a value considerably in excess of its total liabilities. The declaration of war by our Government terminated petitioner's export business, and the subsequent rationing of tires resulted in a curtailment of its domestic business. Your petitioner can provide for the refining of fuel oil, and production of

an aviation gasoline of good quality. In view of the public announcement of a possible shortage of fuel oil, and also in view of the fact that many of the large oil refineries in California are located very near the coast line and are vulnerable from bombing attacks as well as sabotage on the part of our enemies your petitioner feels that its plant should be preserved as a going business and as a vital defense plant during the period of this emergency. Pending an acquisition of the plant by the Government for war purposes, or pending the securing of any Government contracts for petroleum products your petitioner is reasonably certain, from past experience, that this plant can be operated at a profit by the elimination of certain overhead expenses and confining its production efforts to the making of kerosene, which is a rather simple process. [4]

While no plan of reorganization has been prepared, your petitioner is convinced that a plan can be evolved which will preserve the plant of your petitioner as a going business and which will inure to the benefit of its creditors and stockholders.

The specific facts showing why adequate relief cannot be obtained under Chapter XI of said Act are as follows: Your petitioner cannot be reorganized without a reduction, extension, or other satisfactory adjustment of its secured and preferred indebtedness.

## VIII

Your petitioner desires that a plan of reorganization be effected for it under and pursuant to Chapter X of said Act.

## IX

The indebtedness of your petitioner, liquidated as to amount and not contingent as to liability, is less than Two Hundred Fifty Thousand (\$250,000.00) Dollars.

## X

No other petition by or against your petitioner is pending under Chapter X of said Act, nor is any other bankruptcy proceeding initiated by a petition by or against your petitioner, now pending.

## XI.

The officers of your petitioner are: J. Vernon Pohl, President; Earl Whitehead, Secretary, and Robert Raff, Treasurer, and the said officers named now constitute the Board of Directors. The only salaries being paid to officers of the corporation are as follows: J. Vernon Pohl \$350.00 per month; Robert Raff \$225.00 per month

## XII

That attached hereto, marked Exhibit "A" and made a part hereof, is a certified copy of a Resolution of the Board of Directors of your petitioner authorizing the filing of this petition.

Wherefore, your petitioner prays: [5]

(a) That an Order be entered herein approving this petition;

(b) That the debtor be continued in possession of its property and that it have all the title, be vested with all

the rights, be subject to all the duties, and exercise all the powers of a Trustee appointed under Chapter X of the Bankruptcy Act, subject, however, at all times to the control of the Judge and to such limitations, restrictions, terms and conditions as the Judge may from time to time prescribe;

(c) That said Debtor in possession be authorized, directed and empowered to operate the business and manage the properties of your petitioner; and

(d) That further proceedings may be had upon this petition in accordance with the provisions of Chapter X of said Act, and that your petitioner have such other and further relief as is just.

EL CAMINO REFINING COMPANY,

By J. Vernon Pohl

President of said Corporation.

Petitioner.

CRAIG & WELLER

By FRANK C. WELLER

Attorneys for Petitioner.

817 Board of Trade Building,

111 West Seventh Street,

Los Angeles, California.

TRinity 5531 [6]

[Verified.] [7]

[Endorsed]: Filed May 12, 1942. [8]

[Title of District Court and Cause.]

ORDER APPROVING PETITION AND CONTINU-  
ING DEBTOR IN POSSESSION.

The above named debtor having filed its petition herein verified the 11th day of May, 1942, praying that proceedings be had under Chapter X of the Act of Congress relating to Bankruptcy, and it appearing that no notice of said petition should be given,

Now, upon the consideration of said petition and due deliberation having been had thereon, the Court Does Find:

1. That the indebtedness of El Camino Refining Company, the above named debtor, liquidated as to amount and not contingent as to liability, is less than Two Hundred and Fifty Thousand (\$250,000.00) Dollars; and the Court Is Satisfied and Does Find

2. That the said petition of El Camino Refining Company, said debtor, verified on the 11th day of May, 1942, complies with the requirements of Chapter X of said Act.

3. That the said petition of El Camino Refining Company, said debtor, has been filed in good faith, and it is  
Ordered, Adjudged and Decreed

4. That said petition be, and it hereby is approved.

5. That pending the further order of this Court, said debtor be, and it hereby is, continued in possession of its property and estate.

6. That said debtor be, and it hereby is, authorized to operate its business and manage its property until such time as this [9] Court shall otherwise prescribe.



7. That without in any way limiting the generality of paragraphs numbered 5 and 6 hereof, and to the extent consistent with Chapter X of said Act, said debtor shall have full power and authority until the further order of this Court;

(a) To employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees, and servants, other than officers, as it may deem necessary and advisable for the proper operation of its business and the management, preservation and protection of its property;

(b) To purchase or otherwise acquire for cash or on credit, such materials, equipment, machinery, supplies, services or other property as it may deem necessary and advisable in connection with the operation of said business and the management and preservation of said property;

(c) To sell merchandise, supplies and other property, both real and personal, and to render services for cash or on credit;

(d) To enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property;

(e) To keep the property of the within estate insured in such manner and to such extent as it may deem necessary and advisable;

(f) To collect and receive all rents, issues, income and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to hold and retain all moneys thus received to the end that the same may be applied under this and different or further orders of this court;

(g) To do any and all such things and to incur such other expenses as may be necessary and advisable in the proper management and conduct of its affairs and in the preservation and protection of the property and assets of the within estate; [10]

(h) To institute, prosecute, defend, compromise, adjust, intervene in and become a party to such other actions or proceedings in law or in equity, in state or federal courts, as may in its judgment be necessary or advisable for the protection, maintenance and preservation of the property and assets of the within estate.

8. That until the further order of this Court, said debtor, in its discretion, be, and it hereby is, authorized to pay from time to time out of any and all funds now or hereafter coming into its hands and available for such purposes:

(a) All taxes and similar charges lawfully incurred in the operation of its business and the preservation and maintenance of its property and assets since the filing of said petition;

(b) All proper expenses and obligations incurred by it on or after the date of this order in operating its business and preserving and maintaining the property and assets of the within estate, as herein authorized, including among other expenses and obligations, the reasonable wages, salaries, and compensation of all managers, agents, employees, and servants, other than officers employed by it;

(c) The cost of maintaining its corporate existence, including necessary expenses for the preservation of records;

(d) The expense of printing, typing, or mimeographing, and mailing and of publishing notices to creditors,



stockholders and all other parties in interest of proceedings taken hereunder.

9. That until the further order of this Court, said debtor be, and it hereby is, authorized and empowered to employ its officers and pay such officers at the following rate of compensation:

J. Vernon Pohl, President, \$350.00 per month

Robert Raff, Treasurer, \$225.00 per month

10. That said debtor shall close its present books of account as of the close of business on the date of the entry of this order, and shall open new books of account as of the opening of [11] business on the next succeeding business day, in which new books of account it shall cause to be kept proper account of its earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of its business and the management, preservation and protection of its property; and said debtor may withdraw monies from its depositories or depository as required for the proper conduct and maintenance of its business and preservation and protection of its property, as herein authorized, by check signed by such officers as are now so duly authorized by its Board of Directors, and said debtor shall preserve proper vouchers for all payments made on account of such disbursements.

11. That on or before the 29th day of May, 1942, said debtor shall, at the expense of the estate, prepare, make oath to and file in this court:

(a) A schedule of its property showing the location, quantity and money value thereof;

(b) A schedule of its creditors of each class, showing the amounts and character of their claims and securities,

and, so far as known, the name and post office address or place of business of each creditor; and,

(c) A schedule of its stockholders of each class, showing the number and kind of shares registered in the name of each stockholder, and the last known post office address or place of business of each stockholder.

12. That said debtor shall give notice to the Securities and Exchange Commission in the form of a brief statement of all steps taken in connection with this proceeding, as required by §265 of said Act.

13. That June 29th, 1942, at 10 o'clock A.M., Court Room 6 in the Federal Building, Temple and Spring Streets, Los Angeles, California, be, and it hereby is, fixed as the time and place for the hearing of objections to the continuance of said debtor [12] in possession.

14. That on or before the 30th day of June, 1942 said debtor shall petition the Judge to fix a time within which a plan of reorganization for El Camino Refining Company, the above named debtor, may be filed and proposed in this Court, and a subsequent time for a hearing on such plan and for the consideration of any objections or amendments thereto.

15. That until final decree or the further order of this Court, all creditors and stockholders, and all sheriffs, marshals, and other officers, and their respective attorneys, servants, agents and employees, and all other persons, firms, and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity against said debtor in any court, or from executing or issuing or causing the execution or issuance out

of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property owned by or in the possession of the said debtor, and from doing any act or thing whatsoever to interfere with the possession or management by said debtor of the property and assets of the within estate, or in any way interfere with said debtor in the discharge of its duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this court over said debtor and its property; and all persons, firms or corporations owning any lands or buildings occupied by said debtor or wherein is contained any property of the within estate be, and they hereby are jointly and severally, stayed, pending the further order of this Court, from removing or interfering with any such property.

16. That said debtor be, and it hereby is, directed to give notice of the hearing fixed in paragraph numbered 13 hereof at least thirty (30) days prior to June 29, 1942, by mailing such notices [13] to its creditors and stockholders as the same may appear from its records or may be otherwise known to it, to the Secretary of the Treasury at Washington, District of Columbia, and by mailing two (2) copies of such notice to the Securities and Exchange Commission by registered first class mail, postage prepaid, addressed to it at Washington, District of Columbia, or at such other place as the Securities and Exchange Commission shall designate by written notice filed in this proceeding, and served upon the parties to this proceeding, such notice to be in substantially the form set forth in Exhibit "A" attached hereto and made a part hereof.

17. That this Court reserves full right and jurisdiction to make at any time and from time to time such Orders for the purpose of vacating, amplifying, extending, limiting, or otherwise modifying this Order, as the Court shall deem proper.

Dated: May 12, 1942.

Ben Harrison

District Judge [14]

[Endorsed]: Filed May 12, 1942. [15]

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[Title of District Court and Cause.]

ORDER ADJUDGING DEBTOR BANKRUPT AND  
DIRECTING THAT BANKRUPTCY BE PRO-  
CEEDED WITH.

The Court having fixed August 17, 1942 as the time for filing a Plan of Reorganization herein, and said time having been extended by proper order of the Court until the 8th day of March, 1943, and it appearing that no plan has been proposed or filed in this matter within the time prescribed, and it also appearing that no further extension of time for the proposal of plans should be granted, and it also appearing that due notice of this hearing has been given in the manner prescribed by law and that the entry of an Order adjudging the said debtor a bankrupt and directing that bankruptcy be proceeded with is in the interests of creditors and stockholders herein, and it appearing to be the proper case for such an Order;

It Is Hereby Ordered that El Camino Refining Company, the above named debtor, be, and it hereby is adjudged a bankrupt under the Act of Congress relating to Bankruptcy, and [16]

It Is Further Ordered that the bankruptcy of said debtor be proceeded with pursuant to the provisions of said Act, and

It Is Further Ordered that the above entitled proceeding be, and it hereby is referred to Ben E. Tarver, one of the Referees in Bankruptcy of this Court, to take such further proceedings herein as are required and permitted by said Act, and in addition said Referee is invested with jurisdiction to perform such of the duties as are conferred upon courts of bankruptcy, except such as are required by said Act and General Orders in Bankruptcy, to be performed by the Judge, and the said El Camino Refining Company shall henceforth attend before the said Referee and submit to such Orders as may be made by him or by a Judge of this Court relating to bankruptcy.

Dated this 8 day of Mar., 1943.

Ben Harrison  
District Judge

Judgment entered Mar. 8, 1943. Docketed Mar. 8, 1943. Book C. O. #14, page 636. Edmund L. Smith, Clerk; by Murray E. Wire, Deputy.

[Endorsed]: Filed Mar. 8, 1943. [17]

[Title of District Court and Cause.]

## REFEREE'S CERTIFICATE ON REVIEW

The undersigned referee in bankruptcy, to whom was referred by the court the above-entitled case for administration, respectfully certifies and represents:

### I

#### STATEMENT OF THE CASE

This case was commenced May 12, 1942, under Chapter X of the Bankruptcy Act, for the purpose of the reorganization of the above-named corporation. Reorganization having been shown to be impossible, the court, on March 8, 1943, made an Order, pursuant to Section 236-(2) of the Act, adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of the Act, and, at the same time, referred to the undersigned referee, pursuant to Section 22-a of the Act, the bankrupt's estate generally for purposes of administration. The estate has been before the said referee since that time.

During the course of administration, the property of the estate, real and personal, was liquidated and reduced to cash. The assets of the estate consisted of real and personal property. The real property comprised premises at Los Alamitos, Orange County, California, upon which was located an oil refinery plant. The personal property comprised articles of [18] personalty located upon said oil refinery plant and furniture and fixtures at the office formerly conducted by the bankrupt in Los Angeles. The sum of \$19,927.85 was received from the sale of the oil refinery plant, including both real and personal property.



The sum of \$1,312.50 was received from the sale of the personal property at the Los Angeles office. It was stipulated by the parties in interest that of this sum of \$19,927.85 received from the sale of the oil refinery plant, the sum of \$8,150.00 represented the amount attributable to the value of certain oil tanks and equipment used in connection therewith, asserted by the State of California and the Universal Consolidated Oil Company, a corporation, to be real property affixed to the premises, but, on the other hand, asserted by the United States of America to be personal property and not a part of the realty. It was also stipulated that of said sum of \$19,927.85, the sum of \$1,900.00 was attributable to the value of a cooling tower connected with the oil tanks and other machinery and equipment on the bankrupt's premises, but not located on said premises and situated on the adjoining premises of the Pathfinder Oil Company. It was also stipulated by all parties in interest that the sum of \$273.00 was attributable out of said sum of \$19,927.85 to property which all agreed was personalty located upon the bankrupt's premises. It is conceded that the mortgage held by the Universal Consolidated Oil Company is strictly a real property mortgage, covers real property only, and is insufficient as a chattel mortgage, so that, if the oil tanks and cooling tower, or any of these, are held to be personalty, such personalty is not covered by the lien of the mortgage, or any lien of the State of California, and is subject to any valid liens thereon of the Federal Government.

These sales were made with the consent of the lien [19] claimants hereafter mentioned, with the understanding that the lien claims themselves were transferred from the

property to the proceeds of its sale. The lien claims asserted against these funds were three:

(1) A lien claim of the State of California for unpaid franchise taxes for the calendar years 1939 and 1940, both these years being prior to the commencement of this proceeding. The amount of these state taxes was fixed and determined by the State of California prior to May 12, 1942, the date of the commencement of this proceeding. The bankrupt corporation, prior to bankruptcy, filed protests to the amounts fixed, and thereafter, but subsequent to the commencement of this proceeding, the State of California allowed such protests in part and reduced the amount of the taxes originally fixed and determined.

(2) A lien claim of the Universal Consolidated Oil Company, a corporation, based upon a real property mortgage covering and describing the real property upon which the oil refinery plant was situated. The said mortgage was executed, delivered and recorded prior to the commencement of this proceeding.

(3) Lien claims of the United States Government for unpaid gasoline, income and excess profits taxes. The Federal lien claims for gasoline taxes are based upon assessment lists of the Commissioner of Internal Revenue received by the Collector of Internal Revenue at Los Angeles, California both prior to and subsequent to the commencement of this proceeding on May 12, 1942. The first list was so received by the Collector of Internal Revenue at Los Angeles in October, 1941, subsequent to the accrual of the state taxes, and the execution, delivery and recordation of the real property mortgage above-mentioned. Subsequent to the commencement of the above-entitled proceeding on May 12, 1942, the [20] Commis-



sioner of Internal Revenue's list, carrying an assessment of alleged deficiency income and excess profits taxes for the taxable years 1938 and 1939, were received in the office of said Collector of Internal Revenue. None of these federal lien claims were recorded in the Office of the County Recorder of Orange County, California, where the property affected thereby was located, nor were they filed in the Office of the Clerk of the above-entitled court within whose jurisdiction the said property was situated.

It was conceded by all parties concerned, except as hereinafter noted, that the funds on hand were subject first to the payment of all expenses of administration, fixed and determined by the Referee after due notice and hearing, which arose out of the costs and expenses of the preservation of the property affected by such liens, its liquidation and reduction to cash, the determination of the status and relativity of the liens asserted thereon, and the proper distribution of said cash among the persons entitled thereto. The United States of America reserved the right to contend later that the expenses of administration attributable to property finally determined to be covered by said mortgage, should not in any part be borne by property not covered by said mortgage but which was covered by the tax liens of the United States. It developed during the administration that, after the payment of such expenses of administration, the balance left in the estate would be insufficient to pay all valid lien claims asserted against the fund. It became necessary, therefore, for the referee to determine the relative status of the various lien claims so asserted. After hearings held before the referee, upon notice duly given to all parties in interest, an Order was made by the referee on March 3, 1944, fixing

and determining the relative status of such liens in [21] the following order:

First: The tax liens asserted by the State of California for unpaid franchise taxes which were fixed and determined in the sum of \$3,634.22 as of January 15, 1944, plus interest thereon thereafter at the rate of six percent per annum until paid.

Second: The lien of the real property mortgage held by the Universal Consolidated Oil Company, a corporation, which was fixed and determined in the sum of \$11,-234.78 as of January 15, 1944, plus interest thereon thereafter at the rate of six percent per annum until paid.

Third: All liens held by the United States Government for unpaid gasoline, income and excess profits taxes which might be held herein to be valid. No determination was made as to the validity or amount of such taxes because it developed that the entire estate would be consumed in the payment of the reasonable and proper expenses of administration and the liens held by the State of California and the Universal Consolidated Oil Company above specified.

The Order of the Referee made on March 3, 1944, contains his Findings of Fact and Conclusions of Law upon which the Order is based. For that reason such Findings of Fact and Conclusions of Law are not repeated in this Certificate.

Subsequent to the making of the said Order of March 3, 1944, the United States of America, within the time granted by the Referee, filed with the Referee its Petition for a Review by a Judge of the above-entitled court of the said Order of the Referee of March 3, 1944. This Certificate is in response thereto. With the cooperation

of counsel for the interested parties, the Referee has incorporated in this Certificate a summary of the evidence. Attached hereto and made a part hereof is an approval of the form of this Certificate by such counsel. [22] The testimony was taken down in shorthand by three separate reporters but, on account of sickness, and local and war conditions, it has proven difficult to obtain proper transcripts of this testimony, so it was concluded to present to the Judge the summary of the evidence in lieu of reporter's transcripts, a course which is permissible under Section 39-a-(8) of the Act. There is little, if any, conflict in the evidence. The questions which arise are legal and center around the proper legal conclusions to be drawn from the admitted facts. This Certificate is accompanied by the exhibits received in evidence.

The claim of the State of California for its asserted taxes was filed with the Referee April 3, 1943. The claim of the United States of America for the Federal gasoline taxes was filed with the Referee June 20, 1942. The claim of the Federal Government for deficiencies in income and excess profits taxes was filed with the Referee June 20, 1942. A claim for additional Federal gasoline taxes was filed with the Referee on April 2, 1943. Another claim for additional gasoline taxes was filed with the Referee August 13, 1942. The claims filed by the United States of America do not assert liens upon any particular property but are general in their nature. The claim of the Universal Consolidated Oil Company is set forth in its petition for leave to foreclose mortgage filed herein March 26, 1943.

There are other liens and claims, taxes and otherwise, covered and disposed of by the Referee's Findings of Fact,

Conclusions of Law and Order of March 3, 1944, but none of these are involved in connection with this Petition for Review.

## II

### QUESTIONS PRESENTED

The United States Government contended before the Referee that the liens asserted by it were superior to and entitled to prior treatment over the liens asserted by the State [23] of California. If this contention were sustained, then Federal tax liens in existence upon the date of the commencement of this proceeding would be subject only to the lien of the Universal Consolidated Oil Company upon the real estate of the bankrupt, which in turn would be subject to the liens of the State of California. Included in this contention were (1) the proposition that the tax liens of the United States were specific, whereas the liens of the State of California were mere general inchoate liens, and (2) that the lien of the real property mortgage of the Universal Consolidated Oil Company did not cover the oil tanks, or the cooling tower, or the admittedly loose personal property on the oil refinery premises, all of which represented the total sum of \$10,323.00 out of the \$19,927.85 received from the sale of the plant. These asserted liens of the Federal Government are based upon the provisions of Sections 3670, 3671 and 3672 of the United States Internal Revenue Code. Section 3671 of such Internal Revenue Code provides, in effect, that Federal liens, such as those here involved, arise at the time the assessment list is received by the Collector of Internal Revenue. Section 3672 of such Internal Revenue Code provides, in effect, that such Federal liens shall not be valid as against any mortgagee, pledgee, purchaser or

judgment creditor, unless notice thereof has been filed for record by the Collector of Internal Revenue in the office of the County Recorder in the county where the property affected is situated, or with the clerk of the United States District Court within whose jurisdiction the property is situated. The liens asserted by the State of California for taxes arise pursuant to the provisions of Section 29 of the Bank and Corporation Franchise Tax Act of the State of California. The said Section 29 provides, in effect, that all such liens attach to the real estate on the first day of the taxable year for which the taxes are levied. [24]

The questions presented by this Review, therefore, center around the following points:

(1) At the time of the commencement of this proceeding on May 12, 1942, were the tax liens of the State of California mere general inchoate liens and not specific liens and, therefore, subordinate to the tax liens asserted by the United States of America, which are asserted by the Federal Government to be specific liens as of May 12, 1942?

(2) Were the oil tanks and the cooling tower, or any of these, personal and not real property, and, therefore, subject to the tax liens asserted by the United States of America and not subject to the real property mortgage held by the Universal Consolidated Oil Company?

### III

#### SUMMARY OF EVIDENCE

##### 1.

On the 12th day of May, 1942, the above-named bankrupt corporation filed herein its petition for reorganization



under Chapter X of the National Bankruptcy Act of 1898, as amended by the Chandler Act of 1938. The Court thereupon, and on the 12th day of May, 1942, made an Order herein to the effect that said petition was properly filed and was filed in good faith, and continuing the debtor corporation in possession of its assets. Thereafter, and on the 8th day of March, 1943, an Order was made herein adjudicating the said corporation a bankrupt, and referring further proceedings in the administration of its estate to Ben E. Tarver, a Referee in Bankruptcy of this Court. Thereafter, and on the 27th day of March, 1943, Paul W. Sampsell, with the approval of the said Referee, was appointed Trustee in Bankruptcy of said estate, and thereafter and on the 31st day of March, 1943, duly qualified. Ever since said 31st day of March, 1943, the said [25] Paul W. Sampsell has been, and now is, the duly appointed, qualified and acting Trustee in Bankruptcy of said estate.

## 2.

The assets of the bankrupt estate consisted of real and personal property. The real property comprised premises at Los Alamitos, Orange County, California, upon which was an oil refinery plant. The said real property is described as follows:

Lots 13 to 24 inclusive, Block 12 of the Town of Alamitos, Orange County, California, as shown on map filed in Book 1, Page 25, Records of Surveys, in the office of the County Recorder of said County, excepting therefrom that portion of said lands conveyed to the Southern Pacific Railroad Company by deed recorded January 13, 1897, in Book 29, Page 329 of Deeds, Records of Orange County, California.

It was disputed whether or not the machinery, fixtures and equipment of the plant were personal property or permanent fixtures attached to and a part of the real property.

The admitted personal property comprised:

- (1) Loose Articles not permanently affixed to the said premises as a part thereof; and
- (2) Furniture and fixtures at the office formerly conducted by the bankrupt corporation in Los Angeles.

By the consent of lien claimants, all of this property, real and personal, has been sold under the direction and control of the Court. The said sale has been consummated and the purchase price paid to the Trustee. By the consent of the lien claimants, and with the approval of the Trustee and the Court, all liens claimed upon the said property have been transferred to the funds realized from the sales, subject to such expenses of administration fixed by the Court, after due notice, which arose [26] out of the costs and expenses of the preservation of the property, its liquidation and reduction to cash, the determination of the status and relativity of liens asserted upon said cash, and the proper distribution of such cash among the persons entitled to share in the same. The amount received from the sale of the oil refinery plant was \$19,927.85. This figure of \$19,927.85 includes the proceeds from the sale of all real and personal property located at the refinery plant. Personal property of the bankrupt, located in the Los Angeles office of the bankrupt, was sold by the Trustee, at a separate sale for \$1,312.50, which sale was confirmed by the Referee in Bankruptcy,

and the purchase price paid to the Trustee. This makes a total of \$21,240.35 received by the Trustee from the sale of the real and personal property at the oil refinery plant and the personal property at the office of the bankrupt in Los Angeles.

### 3.

On April 3, 1943, the State of California, by and through the California State Franchise Tax Commissioner, filed herein a claim for franchise taxes in the sum of \$3,701.35, plus interest. This claim is based upon the following items:

(1) Taxes accruing as of January 1, 1939, for the calendar year 1939, in the sum of \$1,406.12; and

(2) Taxes accruing as of January 1, 1940, for the calendar year 1940, in the sum of \$1,446.24.

The exact amount of these taxes were fixed and determined at a higher figure by the State of California prior to the commencement of this proceeding, and on or about January 3rd, 1941. Thereafter the taxpayer protested the amount. On August 13, 1942, and after the commencement of this proceeding, the taxpayer was notified by the State of California that its protest was allowed in part and the tax originally fixed on or about January 3, 1941, was finally reduced to and fixed in said sum of \$1,406.12, for [27] the calendar year 1939, and for the calendar year 1940 the sum of \$1,446.24. The said taxes bear interest at the rate of 6% per annum from the date of their accrual until paid. The amount due thereon, principal and interest, as of January 15, 1944, is the sum of \$3,634.22, plus interest thereon thereafter at the rate of 6% per annum until paid. The California law



provides that such taxes (which are imposed by the Bank and the Corporation Franchise Tax Act of the State of California) shall constitute a lien upon the real property of the taxpayer, which lien shall have the same force, effect and priority as a judgment lien, and shall attach on the first day of the taxable year, and that such lien shall remain until the taxes are paid, or the property subject to the lien is sold for the payment thereof, or until the lien is released, or otherwise extinguished.

#### 4.

On May 10th, 1943, after proceedings had and taken for that purpose, and after due notice to all parties in interest, the said Referee made an Order allowing to Universal Consolidated Oil Company, a corporation, a secured claim upon said real property, by reason of a real property mortgage thereon, in the principal sum of \$8,-444.08, with interest thereon thereafter at the rate of 5% per annum from March 15, 1943, until paid. The said mortgage was executed and delivered on January 10, 1941, by the bankrupt corporation to the said Universal Consolidated Oil Company and thereafter recorded on May 3, 1943, in Book 1089, at Page 508, in the Official Records of Orange County, California. The said mortgage secures the payment of a promissory note executed and delivered by the bankrupt to the said Universal Consolidated Oil Company on January 10, 1941.

The said note provides:

“Should it become necessary to bring action for the collection of this note, the maker hereby agrees to [28] pay a reasonable attorney’s fee to be fixed by the Court.”

The said mortgage provides that it secures the payment to the mortgagee of:

“attorney’s fees in a reasonable sum to be fixed by the court in any action brought to foreclose this mortgage, or in any action or proceeding affecting, or purporting to affect, the security of this mortgage or the rights of the mortgagee hereunder, in which mortgagee may appear, whether brought by mortgagor or mortgagee, or whether such foreclosure action, or other action, or proceeding progress to judgment.”

The balance due, as of January 15, 1944, upon the said note and mortgage, principal and interest, exclusive of attorney’s fees, is the sum of \$10,484.78, plus interest thereon thereafter at the rate of 5% per annum until paid. The said mortgage was contested before the Referee on the said hearings by the United States of America, which contended that such machinery, fixtures and equipment were personal property instead of real property, and were not covered by said mortgage which was a real property mortgage and insufficient to be treated as a personal property mortgage. The mortgagee employed the law firm of Faries & McDowell of Los Angeles to represent it in connection with the foreclosure of the mortgage in this proceeding, and to defend its validity as a real property mortgage, the lien of which was entitled to be satisfied out of the proceeds of such sale of the oil refinery, subject only to any prior valid liens thereon established by the Court, and the expenses of administration fixed and allowed by the Court. The said counsel rendered valuable services in connection with such matters. These services are of the reasonable value of \$750.00. Due notice of the

time [29] and place of the hearing of the application of the said Faries & McDowell for the allowance of \$750.00 for their services in this connection, was given to the creditors of the bankrupt estate by mail, pursuant to the provisions of Section 58 of the Bankruptcy Act. Upon the hearing of said application, no objection was made thereto, and the amount claimed was allowed and added on to the principal due under said mortgage.

5.

Universal Consolidated Oil Company was a California corporation engaged in the business of producing and selling, but not refining, oil. The bankrupt, El Camino Refining Company, had a refinery and needed oil for the operation of its plant, it not having any oil production of its own. Universal Consolidated Oil Company sold its oil to El Camino Refining Company. The balance became high in favor of the Universal Consolidated Oil Company. To secure the payment of this balance, El Camino Refining Company first gave a mortgage to the Oil Company to secure the payment of the note of the El Camino Refining Company to it in the sum of approximately \$70,000.00, and thereafter gave another note secured by a mortgage. The first mortgage, which was dated in December of 1940, has been paid. The second mortgage, which was executed as of January, 1941, and recorded on May 3, 1941, was paid down so that the secured claim herein of Universal Consolidated Oil Company, which has been allowed, now stands at the principal sum of \$8,444.08, plus interest and attorney's fees. The interest and attorney's fees allowed by the Court, when added to the principal of the obligation, makes a total amount of \$11,234.76, plus interest thereon at the rate of 5% per annum from January 15, 1944, until paid.

## 6.

At the time these various mortgages were entered into between the Universal Consolidated Oil Company and the El Camino [30] Refining Company, it was the intention of the parties that these mortgages should cover all of the refinery property and its adjuncts except the oil in storage and such loose personal property as tools and laboratory equipment. The machinery, fixtures and equipment of the plant, including oil storage tanks, and a cooling tower upon adjoining premises owned by the Pathfinder Oil Co., were a part of such adjuncts. The oil storage tanks were erected in the following manner: A circular excavation of several inches was made. Placed therein for the foundation of the tank was a circular iron band. In addition to being imbedded in the ground, steel spikes from the band were likewise imbedded in the ground. Inside of this circular steel band was placed loose gravel of the thickness of several inches, and upon this foundation was erected each of these oil storage tanks. Said tanks were of the bolted demountable type. They were connected to pipe nipples, valves, bolted valve flanges and other fittings above ground to pipes imbedded in the ground and thus fastened into the refinery system. They were, also, attached to each other by a system of wooden walks and steel ladders as shown on the photographic exhibits. When the construction was completed the refinery and other machinery and equipment, as well as the storage tanks, constituted one completely closed circuit, all of which was used in the refining process.

At the time the various mortgages were made there was a cooling tower used as a part of and in conjunction with the refinery, located upon the mortgaged premises. How-

ever, this cooling tower became dilapidated and, with the consent of the Universal Consolidated Oil Company, and the land owner adjacent, to-wit: the Pathfinder Oil Company, whose officers were identical with those of the bankrupt herein, a new cooling tower was erected by the bankrupt subsequent to the recordation of the said mortgage, upon the property of the Pathfinder Oil Company, [31] and was connected by pipes, valves, etc., into, with and became a part of the refinery operated by the bankrupt. The president of the bankrupt testified that the new cooling tower was erected by it with the intention of making it an integral part of the oil refinery plant the same as the oil storage tanks. The evidence further shows that the refinery itself could not be operated without such a cooling tower, nor without the oil storage tanks. In exchange for the right of the bankrupt to maintain its new cooling tower upon the property of the Pathfinder Oil Company, that company was authorized to, and did maintain, several oil storage tanks upon the bankrupt's property. This arrangement was also known and consented to by the Universal Consolidated Oil Company. It was stipulated that the Pathfinder tanks were not covered by the said mortgage and were not a part of the bankrupt's refinery; or connected therewith.

## 7.

After the commencement of this proceeding the bankrupt's schedules in this case were signed and verified by the president of the bankrupt corporation. They list all of the machinery, fixtures and equipment located on the oil refinery, including the oil storage tanks and the cooling tower, as personal property. The bankrupt insured the oil refinery plant, including all equipment and machinery thereon, and the oil storage tanks, and the new cooling



tower, against fire, loss, if any, payable to the Universal Consolidated Oil Company and the bankrupt, as their respective interests may appear. The said president testified that said oil storage tanks and cooling tower were erected by the bankrupt corporation with the intention that they should become an integral part of the oil refinery and permanent fixtures attached to the realty.

8.

During the course of the bankruptcy administration the [32] Referee appointed an appraiser to appraise the refinery property of the bankrupt, and during the course of the hearing on the objections to the lien claims of the Franchise Tax Commissioner of the State of California and the Universal Consolidated Oil Company, it was stipulated by all parties in interest that the value received by the Trustee for the new cooling tower, out of the fund, \$19,927.85, realized from the sale, should be a pro-rata share of the appraised value of the cooling tower as shown by the said appraisal, and that this value amounted to \$1,900.00. It was similarly stipulated that the value of the oil storage tanks and the equipment used in connection therewith, was likewise \$8,150.00. It was further stipulated that the Trustee had sold admitted loose personal property located upon the refinery site of the value of \$273.00. This property consisted of laboratory equipment, chairs, desks, etc. This makes a total of \$10,323.00 of said plant sale fund which represents personalty and not real property if the contentions of the United States of America are sound, and a balance of \$9,604.85 of said

fund conceded to be the proceeds of the sale of real property.

9.

The bankrupt has, at all times since the close of the following months, been indebted to the United States of America for gasoline taxes in the amounts set forth below, together with interest thereon as provided by law. The assessment list of the Commissioner of Internal Revenue, carrying said taxes, were received by the Collector of Internal Revenue, at Los Angeles, California, on the dates given:

<u>Month</u>	<u>Amount of Tax</u>	<u>Assessments List Received</u>
October 1941	\$ 301.16	January 6, 1942
November 1941	6,301.31	January 23, 1942
December 1941	3,751.83	March 24, 1942
January 1942	6,090.77	April 28, 1942 [33]
February 1942	6,335.70	May 8, 1942
March 1942	6,044.13	May 28, 1942
April 1942	4,393.00	June 18, 1942
May 1-8, 1942	1,578.42	June 18, 1942

A claim for said federal gasoline taxes was filed in this proceeding on the 20th day of June, 1942.

The bankrupt has at all times since the year 1938 been indebted to the United States of America for deficiencies in its income and excess profits taxes for said year in the sum of \$7,104.66, together with interest thereon as provided by law. The bankrupt has at all times since the close of the taxable year 1939 been indebted to the United

States of America for deficiencies in its income and excess profits taxes for said year in the sum of \$7,276.33, together with interest thereon as provided by law. The Commissioner of Internal Revenue's list, carrying an assessment of said deficiency income and excess profits taxes for the years 1938 and 1939 was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on July 31, 1942, after the commencement of this proceeding. A claim for these taxes was filed in this proceeding on June 20, 1942.

The bankrupt has been indebted to the United States of America, at all times since September 30, 1940, for additional gasoline taxes in the sum of \$40.20, with interest thereon as provided by law. The Commissioner of Internal Revenue's assessment list, carrying an assessment of said additional taxes was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on the 22nd day of January, 1943, after the commencement of this proceeding. A claim for said taxes was filed in this proceeding on the 2nd day of April, 1943.

The bankrupt has been indebted to the United States of America at all times since May 1, 1942, in the sum of \$8.00, with [34] interest thereon as provided by law, as a deficiency in gasoline taxes for the period commencing with June, 1940, and ending in May, 1942. The Commissioner of Internal Revenue's list, carrying an assessment of said taxes, was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on June 29, 1942. A claim was filed in these proceedings



for said taxes on the 13th day of August, 1942, after the commencement of this proceeding.

10.

No lien claims of the United States of America for any of these taxes were recorded in the office of the County Recorder of Orange County, State of California, or filed for record in the office of the Clerk of the United States District Court for the Southern District of California, within whose jurisdictions the oil refinery plant was located.

IV

Papers Transmitted Herewith

Accompanying this Certificate are the following:

(1) The claims filed by the State of California and the United States of America, and the Petition filed by the Universal Consolidated Oil Company for leave to foreclose its mortgage, which Petition contains a copy of the mortgage and the note of the bankrupt corporation secured thereby.

(2) Petition of the Trustee for determination of tax and labor claims and demands.

(3) Order to Show Cause issued thereon by the Referee.

(4) Return of the State of California in response to Order to Show Cause.

(5) Statement of the Nature of Tax Claims of the Collector of Internal Revenue.

(6) Findings of Fact, Conclusions of Law and Order of the Referee. [35]

(7) Petition of the United States of America for a review of the said Order by a Judge of this Court.

(8) The Exhibits received in evidence upon the hearings before the Referee. Included among the Exhibits are photographs showing the physical aspects of the oil refinery plant before its sale by the Trustee.

(9) The Briefs filed by the parties in interest in connection with the hearings before the Referee and the making of the said Order.

Dated: This 9th day of June, 1944.

Ben E. Tarver  
Referee

The foregoing is hereby approved as to form:

Reuben G. Hunt  
REUBEN G. HUNT,  
of Grainger and Hunt,  
attorneys for Trustee

Charles H. Carr—E. H.  
United States Attorney

By Eugene Harpole  
EUGENE HARPOLE,

Attorney for United States of America

McIntyre Faries,  
McINTYRE FARIES,  
of Faries and McDowell,

attorneys for Universal Consolidated Oil Company

R. S. McLaughlin  
R. S. McLAUGHLIN,

Deputy Attorney-General,  
acting for Robert W. Kenny, Attorney-General of  
California.

[Endorsed]: Filed Jun. 10, 1944. [36]

[Title of District Court and Cause.]

PETITION OF TRUSTEE FOR DETERMINATION  
OF TAX AND LABOR CLAIMS AND DE-  
MANDS.

The petition of Paul W. Sampsell respectfully shows:

I

On the 12th day of May, 1942, the above named corporation filed herein its petition for reorganization under Chapter X of the National Bankruptcy Act of 1898, as amended by the Chandler Act of 1938. The court thereupon, and on the 12th day of May, 1942, made an order herein to the effect that said petition was properly filed and was filed in good faith, and continuing the debtor corporation in possession of its assets. Thereafter, and on the 8th day of March, 1943, an order was made herein adjudicating the said corporation a bankrupt, and referring further proceedings in the administration of its estate to Ben E. Tarver, a referee in bankruptcy of this court. Thereafter, and on the 27th day of March, 1943, Paul W. Sampsell, with the approval of the said referee, was appointed trustee in bankruptcy of the estate of the bankrupt corporation, and there- [37] after on the 31st day of March, 1943, duly qualified. Ever since said 31st day of March, 1943, the said Paul W. Sampsell has been, and now is, the duly appointed, qualified and acting trustee in bankruptcy of said estate.

II

The following labor and tax claims and demands have been filed herein. These must be allocated by the court and their status and amount fixed by the court, either as priority claims against the estate provable under the pro-

visions of Section 64 of the Bankruptcy Act, or payable as charges and expenses of administration pursuant to Section 62 of the Bankruptcy Act.

(a)

Labor Claims and Demands

- (1) Howes and Whitaker, 3313 Union Pacific Avenue, Los Angeles, California Filed June 16, 1943 \$ 113.19

This appears to be a charge and expense of administration created between December 11 and 17, 1942. The demand filed does not disclose who, and upon what authority, caused the services to be rendered, nor is it sufficiently itemized.

- (2) Robert Raff, 218 North Manhattan Place, Los Angeles, California Filed April 28, 1943 556.25

This appears to be a charge and expense of administration for salary from December 31, 1942 to March 8, 1943. The demand filed does not indicate who, and upon what authority, caused the services to be rendered, nor is it sufficiently itemized.

- (3) Carroll Hampton, 2430 Budlong Avenue, Los Angeles, California Filed April 28, 1943 295.00

This appears to be a charge and expense of administration for salary from December 31, 1942 to March 8, 1943. The demand filed does not indicate who, and

upon what authority, caused the services to be rendered, nor is it sufficiently itemized. [38]

- (4) J. Vernon Pohl, 1514 Morningside Dr.,  
Burbank, California Filed April 28,  
1943 \$ 784.95

This appears to be a demand for a charge and expense of administration. \$327.45, for Mr. Pohl's expenses, and \$457.50 for his salary. No statement is given as to who, and upon what authority, caused the incurring of this expense. The expenses, as part of this demand, are not completely itemized so as to apprise the Trustee of the nature of the charge.

Total Claims and Demands for Labor \$ 1,749.39

(b)

Tax Claims and Demands

- (1) State of California, State Franchise  
Tax Commissioner, Sacramento, California, filed April 3, 1943 \$ 3,701.35

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (2) United States of America, Collector of Internal Revenue, Los Angeles, Los Angeles, California, filed April 8, 1943 45.57

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate. [39]

- (3) Los Angeles County, California, John R. Quinn, County Assessor, filed April 1, 1943 \$ 24.59

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (4) Orange County, California, James Sleeper, County Assessor, Santa Ana, filed June 9, 1943 723.81

It is uncertain whether this claim or demand is a claim against the estate



under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (5) Orange County, California, James Sleeper, County Assessor, Santa Ana, California, filed June 9, 1943

534.60

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (6) United States of America, Collector of Internal Revenue at Los Angeles, Los Angeles, California, filed July 16, 1943

107.20

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of [40] items is presented to show the nature of the consideration

for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (7) United States of America, Collector of Internal Revenue at Los Angeles, Los Angeles, California, filed July 23, 1942 \$54,399.85

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (8) United States of America, Collector of Internal Revenue, Los Angeles, Los Angeles, California, filed August 13, 1942

8.48

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (9) State of California, State Board of Equalization, Sacramento, California, filed August 14, 1942, 154.07

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate. [41]

- (10) Orange County, California, James Sleeper, County Assessor, Santa Ana, California, filed August 22, 1942 \$ 670.20

It is uncertain whether this claim or demand is a claim against the estate under Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

- (11) State of California, State Franchise Tax Commissioner, Sacramento, California, filed October 21, 1942 3,369.97

It is uncertain whether this claim or demand is a claim against the estate un-

der Section 64 of the Bankruptcy Act, or a charge and expense of administration under Section 62 of the Bankruptcy Act. No bill of items is presented to show the nature of the consideration for the alleged debt. It does not appear from the claim or demand whether or not any lien is asserted upon any property of the estate.

Total Tax Claims	\$63,739.69
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### Recapitulation

Total labor claims or demands	\$ 1,749.39
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Total tax claims or demands	63,739.69
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Total	\$65,489.08
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## III

The assets of the bankrupt estate consisted of real and personal property. The real property consisted of the premises near Artesia, Orange County, California, upon which was located an oil refinery. The personal property consisted of office furniture and fixtures in Los Angeles, and the machinery and equipment of the oil refinery. All of this property has been sold, under the direction and control of the court, and the sales are now in the process of [42] completion.

## IV

On May 10, 1943, the above entitled court in the above entitled proceeding by and through Ben E. Tarver, Referee in Bankruptcy thereof, made an order allowing

to Universal Consolidated Oil Company, a corporation, a secured claim upon said real property by reason of a mortgage thereon, in the sum of \$8,444.08, with interest thereon at the rate of 5% per annum from March 15, 1943. It is necessary, in the administration of this estate, that before such mortgage claim is paid, there be determined by the court the status of such mortgage claim with respect to such tax and labor claims or demands.

Wherefore, the said trustee prays that an order issue herein:

1. Directing all of said parties to appear before the said referee in bankruptcy at a time and place fixed for a hearing and determination of the relative status of these mortgage, tax and labor claims and demands.

2. Directing each of said parties forthwith to prepare for use at said hearing, a complete itemized statement of the nature of the consideration, furnishing the basis of such claims and demands, except the mortgage creditor, such itemized statement to be served upon the trustee at least five days prior to the date of such hearing.

3. For general relief.

4. For the costs of this particular proceeding.

Dated: August 10, 1943.

PAUL W. SAMPSELL

Trustee

GRAINGER and HUNT

By REUBEN G. HUNT

Attorneys for the Trustee [43]

State of California, County of Los Angeles—ss.

Paul W. Sampsell, being first duly sworn, deposes and says:

I am the Trustee named in the foregoing petition; I have read the same and know the contents thereof and the same is true to the best of my knowledge, information and belief.

PAUL W. SAMPSELL

Subscribed and sworn to before me this 10th day of August, 1943.

Bess A. Aldrich (Seal)

Notary Public in and for said County and State.

[Endorsed]: Filed August 11, 1943 at ..... min. past ..... o'clock .... M. Ben E. Tarver, Referee. By Lydia T. Christopher, Clerk.

[Endorsed]: Filed Jun. 10, 1944. [44]

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[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE.

Upon consideration of the petition filed herein by Paul W. Sampsell, the trustee of the estate of the above named bankrupt corporation, for the determination of the status and relativity of certain mortgage, tax and labor claims and demands.

It Is Hereby Ordered that a hearing for that purpose shall be held before the undersigned referee in bankruptcy



at his office in the Otis Building, Santa Ana, California, on Tuesday, August 31, 1943, at 10:30 o'clock A. M., at which time all of the persons mentioned in said petition shall appear and present proof so that the court may determine the amount and relativity of all of such claims and demands.

It Is Hereby Further Ordered that, with the exception of the mortgage claimant, all of such persons shall forthwith prepare and file with the referee, in advance of the hearing, a copy of an itemized statement of the nature of the consideration supporting such claims and demands, which statement shall be served upon the said trustee at least five days prior to the date of such hearing.

It Is Hereby Further Ordered that service of said petition and this Order to Show Cause shall be sufficient if a copy thereof is mailed to each of the said persons from Los Angeles, California, on or before August 30, 1943.

Dated: August 18, 1943.

BEN E. TARVER

Referee in Bankruptcy

[Endorsed]: Filed Aug. 18, 1943 at ..... min. past ..... o'clock .... M. Ben E. Tarver, Referee. By Lydia T. Christopher, Clerk.

[Endorsed]: Filed Jun. 10, 1944. [45]

[Title of District Court and Cause.]

—AMENDED CLAIM—

Proof of Priority Claim for Taxes

This claim is secured by statutory lien as provided in Section 29 of the Bank and Corporation Franchise Tax Act.

On the 1st day of April 1943, came William M. Walsh and made oath and said:

1. That he is one of the authorized and acting agents of the Franchise Tax Commissioner of the State of California, and as such he is qualified and empowered to make this claim on behalf of the said Commissioner;

2. That he is informed and believes the said El Camino Refining Company, Bankrupt, was, at or before the filing of the bankruptcy petition, and is now justly and truly indebted to the State of California in the sum of Three Thousand Seven Hundred One and 35/100 Dollars \$3,701.35);

3. That the consideration of the debt is a tax duly levied and assessed under the provisions of the "Bank and Corporation Franchise Tax Act," computed as follows:

Tax (Principal) accrued.....		
First installment delinquent.....	\$.....	
Credit by remittance.....	\$.....	\$.....
Interest on delinquent installment:		
\$..... from.....to.....@.....% per annum . . . .	\$.....	
\$..... from.....to.....@.....% per annum . . . .	\$.....	
Second installment delinquent.....	\$.....	
Credit by remittance.....	\$.....	\$.....
Interest on delinquent installment:		
\$..... from.....to.....@.....% per annum . . . .	\$.....	
\$..... from.....to.....@.....% per annum . . . .	\$.....	

Deficiency or Proposed Deficiency Assessment:

No.....Date..... . . . . \$.....

Interest on such assessment:

\$..... from.....to.....@.....% per annum . . . . \$.....

\$..... from.....to.....@.....% per annum . . . . \$.....

Total Tax Principal and Accrued Interest to Date

Herein .....SCHEDULE ATTACHED . . . . \$ 3,701.35

To Which Amount the Trustee and/or Referee Must  
Compute and add Thereto All Additional Interest  
at the Rate of 6% Per Annum as Follows:

\$..... from.....to date of payment . . . . \$.....

\$..... from.....to date of payment . . . . \$.....

\$..... from.....to date of payment . . . . \$.....

4. That this claim is entitled to the Priority provided  
by Sec. 64-a of the Bankruptcy Act;

5. That the due date for the said tax is past; that no  
part of the said tax has been paid except as above stated;  
that there are no set-offs or counterclaims to the same;  
that no note or judgment has been recovered therefor;  
that deponent has not, nor has any person, to his knowl-  
edge or belief, for the use or benefit of the State of Cali-  
fornia, had or received any manner of security for the  
said tax or interest or penalty whatever, Except as fol-  
lows:

12

William M Walsh

Assistant Commissioner

MR

Subscribed and sworn to before me this 1st day of April 1943.

[Seal]

Thelma N. Brietzke

Notary Public in and for County of Sacramento,  
State of California

My commission expires October 4, 1944.

Filed 4-3-43.

Rcd 4/3-43 B E T. [46]

Tax (Principal) accrued.....			
First installment delinquent.....	\$.....		
Credit by remittance.....	\$.....	\$.....	
Interest on delinquent installment:			
\$..... from.....to.....@.....% per annum . . . .			\$.....
\$..... from.....to.....@.....% per annum . . . .			\$.....
Second installment delinquent .....	\$.....		
Credit by remittance.....	\$.....	\$.....	
Interest on delinquent installment:			
\$..... from.....to.....@.....% per annum . . . .			\$.....
\$..... from.....to.....@.....% per annum . . . .			\$.....
Tax (Principal) accrued 1/1/43			
First installment delinquent 3/15/43.....	\$	12.50	
Credit by remittance — .....	\$	—	\$ 12.50
Interest on delinquent installment:			
\$ 12.50 from 3/15/43 to 4/1/43 @ 6% per annum . . . .			\$ .03
\$..... from.....to.....@.....% per annum . . . .			\$.....
Second installment delinquent 9/15/43.....	\$	12.50	
Credit by remittance — .....	\$	—	\$ 12.50
Interest on delinquent installment:			
\$..... from.....to.....@.....% per annum . . . .			\$.....
\$..... from.....to.....@.....% per annum . . . .			\$.....
Tax (Principal) accrued 1/1/39			
First installment delinquent 3/15/39.....	\$	419.48	
Credit by remittance 3/14/39.....	\$	419.48	\$ —
Interest on delinquent installment:			
\$..... from.....to.....@.....% per annum . . . .			\$.....
\$..... from.....to.....@.....% per annum . . . .			\$.....

Second installment delinquent 9/15/39.....	\$	419.48	
Credit by remittance 3/14/39.....	\$	419.48	\$ —
Interest on delinquent installment:			
\$..... from.....to.....@....% per annum . . . .		\$.....	
\$..... from.....to.....@....% per annum . . . .		\$.....	

## Deficiency or Proposed Deficiency Assessment:

No. 319294 Date 9/25/42.....	. . . .	\$	1,406.12
Interest on such assessment:			
\$1,406.12 from 3/15/39 to 9/25/42 @ 6% per annum . . . .		\$	297.94
\$1,704.06 from 9/25/41 to 4/1/43 @ 6% per annum . . . .		\$	154.91

## Tax (Principal) accrued 1/1/40

First installment delinquent 3/15/40.....	\$	854.34	
Credit by remittance 3/13/40.....	\$	854.34	\$ —
Interest on delinquent installment:			
\$..... from.....to.....@....% per annum . . . .		\$.....	
\$..... from.....to.....@....% per annum . . . .		\$.....	

Second installment delinquent 9/15/40.....	\$	854.34	
Credit by remittance 12/28/40.....	\$	854.34	\$ —
Interest on delinquent installment:			
\$..... from.....to.....@....% per annum . . . .		\$.....	
\$..... from.....to.....@....% per annum . . . .		\$.....	

## Deficiency or Proposed Deficiency Assessment:

No. 319295 Date 9/25/42.....	. . . .	\$	1,446.24
Interest on such assessment:			
\$1,446.24 from 3/15/40 to 9/25/42 @ 6% per annum . . . .		\$	219.67
\$1,665.91 from 9/25/42 to 4/1/43 @ 6% per annum . . . .		\$	151.44

## Total Tax Principal and Accrued Interest to Date

Herein .....	. . . .	\$	3,701.35
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To Which Amount the Trustee and/or Referee Must  
Compute and add Thereto All Additional Interest  
at the Rate of 6% Per Annum as Follows:

\$3,382.47 from 4/1/43.....to date of payment . . . .	\$.....
\$ 12.50 from 9/15/43.....to date of payment . . . .	\$.....
\$..... from.....to date of payment . . . .	\$.....

[Endorsed]: Filed 4-3-1943. Ben E. Tarver, Referee.  
By B. B., Clerk.

[Endorsed]: Filed Jun. 10, 1944. [47]

[Title of District Court and Cause.]

State of California, County of Los Angeles—ss.

### CLAIM OF UNITED STATES FOR TAXES.

Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says: (1) That the above-named, is justly and truly indebted to the United States in the sum of \$54,399.85, With Interest and/or Penalties thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax	Period	Tax	Penalty	Interest	
				Assessed	Accrued
Gasoline	Oct. 1941 Bal.	\$ 301.16		As provided by law	
"	Nov. 1941	6,301.81		\$ 15.54	" " "
"	Dec., 1941	8,751.83		61.02	" " "
"	Jan., 1942	6,090.77		48.47	" " "
"	Feb., 1942	6,355.70		47.45	" " "
"	Mar., 1942	6,044.13		14.90	" " "
"	Apr., 1942	4,393.00		10.83	" " "
"	May 1-8, '42	1,578.52		3.93	" " "
INCOME—Def.	1938	6,742.02			" " "
Excess Profits	1938	362.44			" " "
INCOME—Def.	1939	5,803.12			" " "
Excess Profits	1939	1,473.21			" " "
		\$54,197.71		\$202.14	
		\$54,399.85			

The Collector of Internal Revenue should be notified before payment of this claim is made in order that advice may be given with respect to the correct amount of statutory interest due.

\*With respect to (5) below, the United States hold a security bond in the amount of \$4,000.00.

Taxable Wages	\$.....	Taxable Wages	\$.....	Taxable Wage	\$.....
Tax (%)	.....	Tax (%)	.....	Tax (%)	.....
Credit Taken	.....	Credit Taken	.....	Credit Taken	.....
Due on Return	.....	Due on Return	.....	Due on Return	.....
Paid on Return	.....	Paid on Return	.....	Paid on Return	.....
Credit Disallowed	.....	Credit Disallowed	.....	Credit Disallowed	.....
Balance Due (Tax)	.....	Balance Due (Tax)	.....	Balance Due (Tax)	.....



(3) That no part of said debt has been paid, but that the same is now due and payable at the office of the Collector of Internal Revenue at Los Angeles, Calif.; (4) That there are no set-offs or counterclaims to said debt; (5)\* That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens; (6) That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon; (7) That said debt has priority, and must be paid in full in advance of distributions to creditors, as and to the extent provided in Section 64 in Section 659 of the Bankruptcy Act, Section 3466 of the Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or other person who fails to pay the claims of the United States in accordance with their priority.

Dated this 20th day of June, 1942.

Nat Rogan

Collector of Internal Revenue for the Sixth District of California.

Subscribed and sworn to before me this 20th day of June 1942.

T. G. Albright [Seal]  
Notary Public

My commission expires Oct. 18, 1944.

[Endorsed]: Filed Jul. 3, 1942. [48]

[Title of District Court and Cause.]

STATEMENT OF THE NATURE OF TAX CLAIMS  
OF THE COLLECTOR OF INTERNAL REVENUE.

In response to the Order to Show Cause, issued herein on the 11th day of August, 1943, Harry C. Westover, Collector of Internal Revenue for the Sixth District of California, respectfully shows to the court as follows:

I

The claim filed in the sum of \$180.22 on or about the 30th day of June, 1943, discloses upon its face that the bankrupt is indebted to the United States for Victory taxes during the first quarter of the calendar year of 1943 in the sum of \$74.50, and Federal Insurance contributions for the first quarter of 1943 in the sum of \$34.60, plus statutory interest. The assessment lists carrying these taxes were received in the Collector's office on the 18th day of May, 1943 and June 21, 1943 respectively. The Victory Tax represents a withholding tax of 5% upon wages paid during the period covered. The Federal Insurance and contributions tax represents withholding tax of 2% upon wages earned or paid during the first quarter of 1943.

II

The claim of the Collector of Internal Revenue filed on or [49] about the 2nd day of April, 1943 for additional September, 1940 gasoline taxes in the sum of \$45.57, with accruing interest as provided by law represents Federal tax upon gasoline produced and sold by the bank-

rupt during the month of September, 1940, computed at the rate of  $1\frac{1}{2}$  cents per gallon. The assessment list carrying the above entitled tax was received in the office of the Collector of Internal Revenue for the Sixth Collection District of California on the 22nd day of January, 1943.

### III

The claim of the Collector of Internal Revenue filed on or about the 13th day of August, 1942 for deficiency gasoline taxes covering the period of June, 1940 to May, 1942 in the sum of \$8.48 represents Federal gasoline taxes and interest accruing thereon, determined on account of the production and sale of gasoline by the bankrupt during the months, June, 1940 to May, 1942. The taxes imposed at the rate of  $1\frac{1}{2}$  cents per gallon, upon 533 gallons of gasoline added to kerosene distillate in the month of May, 1941. The assessment list bearing these taxes was received in the office of the Collector of Internal Revenue on June 29, 1942.

### IV

The claim of the Collector of Internal Revenue for the Sixth Collection District of California for the sum of \$54,399.85 with accruing interest, represents Federal gasoline taxes for the months of October, November and December, 1941, January, February, March, April, and May 1 to 8, 1942. This tax is imposed upon gasoline produced by the bankrupt at the rate of  $1\frac{1}{2}$  cents per gallon. The claim further contains items of deficiency income and excess profits taxes for the years 1938 and 1939 as determined by the United States Board of Tax Appeals in its case, docket No. 106,202 on June 24, 1942. The assess- [50] ment list carrying these income and ex-

cess profits taxes was received in the office of the Collector on July 31, 1942. The assessment lists covering said gasoline taxes were received as follows:

<u>Year</u>	<u>Amount</u>	<u>Assessed Interest</u>	<u>Date Assess- ment Received</u>
Oct., 1941	Bal. \$ 301.16		Jan. 6, 1942
Nov., 1941	6,301.81	\$15.54	Jan. 23, 1942
Dec., 1941	3,751.83	61.02	Mar. 24, 1942
Jan., 1942	6,090.77	48.47	Apr. 28, 1942
Feb., 1942	6,336.70	47.45	May 8, 1942
Mar., 1942	6,044.13	14.90	May 26, 1942
Apr., 1942	4,393.00	10.83	June 18, 1942
May. 1-8, 1942	1,578.42	.....	June 18, 1942

Charles H. Carr—E. H.

CHARLES H. CARR,

United States Attorney

E. H. Mitchell—E. H.

E. H. MITCHELL,

Assistant United States Attorney

Eugene Harpole

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue.

Received copy of the within ..... this 27 day of August, 1943.

PAUL W. SAMPSELL,

Trustee of El Camino Refining Co., Bankrupt,

by E. S. Craig.

[Endorsed]: Filed Aug. 28, 1943. Ben E. Tarver, Referee, By Lydia T. Christopher, Clerk.

[Endorsed]: Filed Jun. 10, 1944. [51]

[Title of District Court and Cause.]

RETURN OF THE STATE OF CALIFORNIA IN  
RESPONSE TO ORDER TO SHOW CAUSE  
ISSUED AUGUST 11, 1943.

Comes Now the People of the State of California and respectfully shows that the above entitled bankrupt is lawfully indebted to the State of California for the following taxes:

I

As a cost of administration for the privileges extended by the Bank and Corporation Franchise Tax Act of the State of California in the principal sum of.....	\$ 25.00
Plus interest at the rate of 6% per annum, as provided in Section 24(c) of said act which requires such interest to be collected as part of such tax, from March 15, 1943 to September 1, 1943, in the amount of .....	.38
	<hr/>
	\$ 25.38 [52]

II

As a prior tax lien claim for the privileges extended by the Bank and Corporation Franchise Tax Act, which accrued and became a lien on January 1, 1939 in the principal amount of.....	\$1,406.12
Plus accrued interest at the rate of 6% per annum as provided in Section 24 of said act, which requires such interest to be collected as part of such tax, from March 15, 1939 to September 1, 1943 in the amount of .....	495.45
	<hr/>
Total	\$1,901.57

## III

As a prior tax lien claim for the privileges extended by the Bank and Corporation Franchise Tax Act of the State of California which accrued and became a lien on January 1, 1940 in the principal amount of .....	\$1,446.24
Plus accrued interest at the rate of 6% per annum, as provided in Section 24 of said act which requires such interest to be collected as part of such tax, from March 15, 1940 to September 1, 1943 in the sum of .....	412.76
Total	<hr/> \$1,859.00

## IV

The lien securing the two items set out above in paragraphs numbered II and III is set forth in Section 29 of the Bank and Corporation Franchise Tax Act which, so far as here pertinent, reads as follows: [53]

“The taxes imposed by this act shall constitute a lien upon the real property of the taxpayer, which lien shall have the same force, effect and priority as a judgment lien and shall attach on the first day of the ‘taxable year’ . . . The lien provided for in this section shall remain until the taxes are paid or the property subject to the lien is sold for the payment thereof, or until the lien is released or otherwise extinguished. . . .”



The tax items hereinabove referred to in paragraphs I, II and III constitute the same items set forth as item number (1) on page 3 of the Trustee's Petition for determination of tax and labor claims and demands, dated August 10 1943 on file herein. This item constituted an amended claim and superseded the claim set forth as item (11) on page 6 of said Trustee's Petition above referred to.

# V

As a prior tax claim under Section 64a of the Bankruptcy Act, for Retail Sales taxes, which accrued between July 1, 1939 and May 12, 1942 in the principal amount of .....	\$ 141.42
Plus interest at the rate of $\frac{1}{2}$ of 1% per month as provided by Section 22 of the Retail Sales Tax Act to September 15, 1943 in the amount of.....	21.14

Total	\$162.56 [54]
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This is the same item mentioned as number (9) on page 5 of the Trustee's Petition above referred to.

Dated: August 27, 1943.

ROBERT W. KENNY,  
Attorney General of the State of California

By R. S. McLAUGHLIN  
Deputy Attorney General

Attorneys for State of California. [55]

[Verified.]

[Endorsed]: Filed August 30, 1943. Ben E. Tarver, Referee. By Lydia E. Christopher, Clerk.

[Endorsed]: Filed Jun. 10, 1944. [56]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER.

Paul W. Sampsell, the Trustee in Bankruptcy of the estate of the above-named bankrupt corporation, having filed herein his petition for the determination of the status and relativity of certain mortgage, tax and labor claims and demands, and the undersigned Referee having thereupon issued on August 11, 1943, an Order directing the parties named in the said petition to appear before the Referee at a time and place specified, then and there to show cause, if any, why such determination should not be made,

And the said Petition and the said Order to Show Cause coming on regularly for hearing before the said referee on August 31, 1943, and thereafter, and the following appearances having been made:

1. Paul W. Sampsell, the Trustee in Bankruptcy, in person.
2. Reuben G. Hunt, of the firm of Grainger & Hunt, counsel for the Trustee.
3. Frank C. Weller, of the firm of Craig & Weller, counsel for the debtor-bankrupt.
4. R. S. McLaughlin, Deputy Attorney General, for the State of California.
5. Eugene Harpole, Special Attorney for the United States of America, Internal Revenue Department.  
[73]
6. McIntyre Faries, of the firm of Faries & McDowell, counsel for Universal Consolidated Oil Co.

7. J. S. Ogle, County Counsel of Orange County, California.
8. Thomas S. Tobin, counsel for Howes & Whittaker, Robert Raff, Carroll Hampton, and J. Vernon Pohl.

And testimony having been offered and received relative to the matters set forth in the said Petition, and the case having been submitted to the Referee for decision and considered by him, the Referee makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact.

I.

On the 12th day of May, 1942, the above-named bankrupt corporation filed herein its petition for reorganization under Chapter X of the National Bankruptcy Act of 1898, as amended by the Chandler Act of 1938. The Court thereupon, and on the 12th day of May, 1942, made an order herein to the effect that said petition was properly filed and was filed in good faith, and continuing the debtor corporation in possession of its assets. Thereafter, and on the 8th day of March, 1943, an order was made herein adjudicating the said corporation a bankrupt, and referring further proceedings in the administration of its estate to Ben E. Tarver, a Referee in Bankruptcy of this Court. Thereafter, and on the 27th day of March, 1943, Paul W. Sampsell, with the approval of the said Referee, was appointed Trustee in Bankruptcy of said estate, and thereafter and on the 31st day of March, 1943, duly qualified. Ever since said 31st day of March, 1943, the said Paul W. Sampsell has been, and now is, the duly appointed, qualified and acting Trustee in Bankruptcy of said estate.

## II.

The assets of the bankrupt estate consisted of real and [74] personal property. The real property comprised premises at Los Alamitos, Orange County, California, upon which was located and affixed thereto and made a part of the real property an oil refinery plant. The said real property is described as follows:

Lots 13 to 24 inclusive, Block 12 of the Town of Alamitos, Orange County, California, as shown on map filed in Book 1, Page 25, Records of Surveys, in the office of the County Recorder of said County, excepting therefrom that portion of said lands conveyed to the Southern Pacific Railroad Company by deed recorded January 13, 1897, in Book 29, page 329 of Deeds, Records of Orange County, California.

The personal property comprised: (1) loose articles not permanently affixed to the said premises as a part thereof; and (2) furniture and fixtures at the office formerly conducted by the bankrupt corporation in Los Angeles. By the consent of all lien claimants, all of this property, real and personal, has been sold under the direction and control of the Court. The said sale has been consummated and the purchase price paid to the Trustee. By the consent of all lien claimants, and with the approval of the Trustee and the Court, all liens claimed upon the said property have been transferred to the fund realized from the sales, subject to such expenses of administration fixed by the Court, after due notice, which arise out of the costs and expenses of the preservation of the property, its liquidation and reduction to cash, the determination of the status and relativity of liens asserted upon said cash, and the proper distribution of such cash among the persons entitled to share in the same. The amount received from

the sale of the oil refinery plant was \$19,927.85. Except as hereinafter stated all of the machinery, fixtures and equipment located and affixed thereto and made a part of the real property upon the said oil refinery at the time of the said sale, was real property and not personal property. Except as hereinafter stated all of the funds realized from the said sale are proceeds of the sale of such real property. Only a very small [75] amount thereof is the result of the sale of personal property located on the said premises.

In addition to the other property located and affixed thereto and made a part of the real property upon the said premises, there were oil tanks, including ladders, stairways, walkways, guard rails, vents, cover plates, valves and fittings, all of which were, in the contemplation of the parties to the real property mortgage upon the said real property, hereinafter referred to, covered by the said mortgage, and all of which were an integral and essential part of the said oil refinery and used in the operation thereof. The said oil tanks, together with the incidental equipment used in connection therewith and above mentioned, were and are permanently affixed to the other portions of the said oil refinery and to the said real property. The portion of said sale price of \$19,927.85, for the said oil refinery, attributable to the value of the said oil tanks and the said equipment used in connection therewith, is \$8,150.00.

One part of said oil refinery, that is, a new cooling tower is and was not located upon any part of the premises described in the said mortgage, but is and was located upon adjacent real property belonging to The Pathfinder Company. Said new cooling tower was, and is, an integral, necessary and essential part of the said oil refinery, and was, and is, permanently attached thereto by pipes above

and below ground and by wiring and conduit. Said new cooling tower was so located upon said Pathfinder real property under an oral agreement in exchange for a similar right granted The Pathfinder Company by the bankrupt to maintain several oil storage tanks upon the bankrupt's oil refinery property. Said agreement was known and consented to by the Universal Consolidated Oil Co., the mortgagee in the said real property mortgage hereinafter referred to. Said new cooling tower was not in existence at the time of the execution and delivery of the said real property mortgage to the said Universal Consolidated Oil Co., but was after- [76] wards erected upon the Pathfinder Company real property by the bankrupt to replace an old cooling tower, which was, at the time of the execution and delivery of the said real property mortgage, actually standing upon the real property described in the said mortgage. The old cooling tower was demolished when the new cooling tower was erected. The proper portion of the total sales price of \$19,927.85, of the oil refinery plant attributable to the value of the said new cooling tower, is \$1,900.00.

Personal property of the bankrupt, not located upon the refinery premises, was sold by the Trustee in Bankruptcy, at a separate sale for \$1312.50, which sale was confirmed by the Referee in Bankruptcy, and the purchase price paid to the Trustee.

The personal property of the bankrupt located upon the said oil refinery premises was sold by the Trustee, together with the real estate, as one unit, as above stated, for a total purchase price of \$19,927.85. The portion of said sale price of said oil refinery, attributable to the said personal property located upon the refinery premises, is \$273.00. The total sale price of all of the personal property of the bankrupt is \$1,585.50.



## III.

On April 3, 1943, the State of California, by and through the California State Franchise Tax Commissioner, filed herein a claim for franchise taxes in the sum of \$3,701.35, plus interest. This claim is based upon the following items: (1) taxes accruing as of January 1, 1939, for the calendar year 1939, in the sum of \$1,406.12; and (2) taxes accruing as of January 1, 1940, for the calendar year 1940, in the sum of \$1,446.24. The exact amount of these taxes was not fixed and determined at the time they accrued but were fixed and determined prior to the commencement of these bankruptcy proceedings. After the commencement of these bankruptcy proceedings, and during their course, after consideration of a protest made by the bankrupt corporation, the amounts of such taxes, so fixed and determined prior to bankruptcy, were voluntarily reduced by the State of California to the said sums of \$1,406.12, as of January 1, 1939, [77] and \$1,446.24, as of January 1, 1940. The said taxes bear interest at the rate of 6% per annum from the date of their accrual until paid. The amount due thereon, principal and interest, as of January 15, 1944, is the sum of \$3,634.22, plus interest thereon thereafter at the rate of 6% per annum until paid. The California law provides that such taxes (which are imposed by the Bank and the Corporation Franchise Tax Act of the State of California) shall constitute a lien upon the real property of the taxpayer, which lien shall have the same force, effect and priority as a judgment lien, and shall attach on the first day of the taxable year; and that such lien shall remain until the taxes are paid, or the property subject to the lien is sold for the payment thereof, or until the lien is released, or otherwise extinguished.

In connection with these taxes the State of California, by and through its State Franchise Tax Commissioner, filed herein, on October 21, 1942, a claim for the same taxes in the sum of \$3,369.97, but has notified the court that such claim is to be disregarded since it is covered by the said claim filed April 3, 1943.

#### IV.

On May 10, 1943, after proceedings had and taken for that purpose, and after due notice to all parties in interest, the said Referee made an Order allowing to Universal Consolidated Oil Co., a corporation, a secured claim upon said real property, by reason of a real property mortgage thereon, in the principal sum of \$8,444.08, with interest thereon thereafter, at the rate of 5% per annum from March 15, 1943, until paid. The said mortgage was executed and delivered on January 10, 1941, by the bankrupt corporation to the said Universal Consolidated Oil Co., and thereafter recorded on May 3, 1943, in Book 1089, at Page 508, in the Official Records of Orange County, California. The said mortgage [78] secures the payment of a promissory note executed and delivered by the bankrupt to the said Universal Consolidated Oil Co. on January 10, 1941.

The said note provides: "Should it become necessary to bring action for the collection of this note, the maker hereby agrees to pay a reasonable attorney's fee to be fixed by the Court." The said mortgage provides that it secures the payment to the mortgagee of "attorney's fees in a reasonable sum to be fixed by the court in any action brought to foreclose this mortgage, or in any action or proceeding affecting or purporting to affect the security of this mortgage or the rights of mortgagee hereunder,

in which mortgagee may appear, whether brought by mortgagor or mortgagee, or whether such foreclosure action, or other action, or proceeding progress to judgment." The balance due, as of January 15, 1944, upon the said note and mortgage, principal and interest, exclusive of attorney's fees, is the sum of \$10,484.78, plus interest thereon thereafter at the rate of 5% per annum until paid. The said mortgage was contested before the Referee on the said hearings, by the United States of America, which contended that the said mortgage insofar as it covered the machinery, fixtures and equipment upon the said oil refinery plant, purported to be a chattel mortgage covering personal property, and that such machinery, fixtures and equipment were personal property instead of real property. The mortgagee employed the law firm of Faries & McDowell of Los Angeles to represent the mortgagee in connection with the foreclosure of the mortgage in the bankruptcy proceedings, and to defend its validity as a real property mortgage, the lien of which was entitled to be satisfied out of the proceeds of such sale of the oil refinery, subject only to any prior valid liens thereon established by the court, and the expenses of administration fixed and allowed by the court. The said counsel rendered valuable services in connection with such matters. These [79] services are of the reasonable value of \$750.00. Due notice of the time and place of the hearing of the application of the said Faries & McDowell for the allowance of \$750.00 for their services in this connection, was given to the creditors of the bankrupt estate by mail, pursuant to the provisions of Section 58 of the Bankruptcy Act. Upon the hearing of said application, no objection was made thereto.

## V.

Howes & Whittaker filed herein, on June 16, 1943, a claim for \$113.19 based upon engineering services rendered the debtor corporation during the reorganization part of this proceeding and prior to the adjudication in bankruptcy, at the instance and request of the debtor corporation. The reasonable value of such services is \$113.19. The rendition of such services was impliedly authorized by the Judge of this Court during the reorganization part of this proceeding.

## VI.

Robert Raff filed herein, on April 28, 1943, a claim for \$556.25, based upon services rendered as Vice President of the debtor corporation from December 31, 1942 to March 8, 1943, during the reorganization part of this proceeding and prior to the adjudication in bankruptcy, at the instance and request of the debtor corporation. The reasonable value of such services is \$556.25. The rendition of such services was impliedly authorized by the Judge of this Court during the reorganization part of this proceeding. This amount of \$556.25 is subject to the deduction of \$27.38, covering taxes due from Robert Raff to the United States of America, which will have to be paid out of the bankrupt estate, leaving the net amount of this claim to be paid out of the estate the sum of \$528.87.

## VII.

Carroll Hampton filed herein, on April 28, 1943, a claim [80] for \$295.00, based upon services rendered as Office Manager of the debtor corporation from December 31, 1942 to March 8, 1943, during the reorganization part of this proceeding and prior to the adjudication in bankruptcy, at the instance and request of the debtor corpora-

tion. The reasonable value of such services is \$295.00. The rendition of such services was impliedly authorized by the Judge of this Court during the reorganization part of this proceeding. This amount of \$295.00 is subject to the deduction of \$7.85, covering taxes due from Carroll Hampton to the United States of America, which will have to be paid out of the bankrupt estate, leaving the net amount of this claim to be paid out of the estate the sum of \$287.15.

### VIII.

J. Vernon Pohl filed herein, on April 28, 1943, a claim for \$784.95, based upon services rendered as President of the debtor corporation, in the sum of \$457.50, and expenses incurred as such President, in the sum of \$327.45, during the reorganization part of this proceeding and prior to the adjudication in bankruptcy, at the instance and request of the debtor corporation. The reasonable value of such services is \$457.50; and the amount of such expenses is reasonable. The rendition of such services, and the incurring of such expenses, was impliedly authorized by the Judge of the Court during the reorganization part of this proceeding. This amount of \$784.95 is subject to the deduction of \$24.27, covering taxes due from J. Vernon Pohl to the United States of America, which will have to be paid out of the bankrupt estate, leaving the net amount of this claim to be paid out of the estate the sum of \$760.68.

### IX.

The bankrupt has, at all times since the close of the following months, been indebted to the United States of America for gasoline taxes in the amounts set forth below, together with interest [81] thereon as provided by law. The assessment list of the Commissioner of Internal



Revenue, carrying said taxes, were received by the Collector of Internal Revenue, at Los Angeles, California, on the dates given.

<u>Month</u>	<u>Amount of Tax</u>	<u>Assessment List Received</u>
October, 1941	\$ 301.16	January 6, 1942
November, 1941	6,301.31	January 23, 1942
December, 1941	3,751.83	March 24, 1942
January, 1942	6,090.77	April 28, 1942
February, 1942	6,335.70	May 8, 1942
March, 1942	6,044.13	May 28, 1942
April, 1942	4,393.00	June 18, 1942
May 1-8, 1942	1,578.42	June 18, 1942

A claim for said federal gasoline taxes was filed in this proceeding on the 20th day of June, 1942.

### X.

The bankrupt has at all times since the year 1938 been indebted to the United States of America for deficiencies in its income and excess profits taxes for said year in the sum of \$7,104.66, together with interest thereon as provided by law. The bankrupt has at all times since the close of the taxable year 1939 been indebted to the United States of America for deficiencies in its income and excess profits taxes for said year in the sum of \$7,276.33, together with interest thereon as provided by law. The Commissioner of Internal Revenue's list, carrying an assessment of said deficiency income and excess profits taxes for the years 1938 and 1939 was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on July 31, 1942. A claim for these taxes was filed in this proceeding on June 20, 1942.



## XI.

The bankrupt has been indebted to the United States of America, at all times since September 30, 1940, for additional [82] September, 1940, gasoline taxes, in the sum of \$40.20, with interest thereon as provided by law. The Commissioner of Internal Revenue's assessment list, carrying an assessment of said additional taxes for the month of September, 1940, was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on the 22nd day of January, 1943. A claim for said taxes was filed in this proceeding on the 2nd day of April, 1943.

## XII.

The bankrupt has been indebted to the United States of America at all times since May 1, 1942, in the sum of \$8.00, with interest thereon as provided by law, as a deficiency in gasoline taxes for the period commencing with June, 1940, and ending in May, 1942. The Commissioner of Internal Revenue's list, carrying an assessment of said taxes was received in the office of the Collector of Internal Revenue, at Los Angeles, California, on June 29, 1942. A claim was filed in these proceedings for said taxes on the 13th day of August, 1942.

## XIII.

The County of Los Angeles, State of California, by and through its County Assessor, filed herein on April 1, 1943, its claim for personal property taxes on the property of the estate located in the City of Los Angeles in the sum of \$24.59. The said claim arose by reason of transactions during the bankruptcy, and is payable pro rata as an expense of administration pursuant to the provisions of Section 62-a of the Bankruptcy Act.

## XIV.

The County of Orange, State of California, by and through its County Assessor, filed herein on June 9, 1943, its claim for personal property taxes upon personal property located in Orange County, California, in the sum of \$723.81. This claim is for the fiscal year of 1941-1942, and is payable only as a priority claim under Section 64-a-(4) of the Bankruptcy Act, and is subject [83] to the payment of expenses of administration and the liens fixed and determined herein. It is not necessary to determine at this time the validity and amount of such claim since the funds in the estate will be insufficient to pay the expenses of administration and such liens.

## XV.

The County of Orange, State of California, by and through its County Assessor, filed herein on June 9, 1943, its claim in the sum of \$534.60 for personal property taxes on the personal property of the estate in Orange County, California, covering the fiscal year 1942-1943. This claim is an expense of administration herein payable pro rata pursuant to provisions of Section 62-a of the Bankruptcy Act.

## XVI.

The United States of America, by and through the Collector of Internal Revenue at Los Angeles, filed herein on July 16, 1943, its claim for Federal Victory Taxes and insurance contributions in the sum of \$107.10. This claim arose out of transactions arising during the course of the bankruptcy proceedings and is payable pro rata as an expense of administration herein pursuant to the provisions of Section 62-a of the Bankruptcy Act. The amount due, as of January 15, 1944, is \$113.79, plus interest thereafter at 6% per annum until paid.

## XVII.

The State of California, by and through the State Board of Equalization, filed herein on August 14, 1942, its claim for retail sales taxes in the sum of \$154.07. This claim is for the fiscal year of 1941-42, and is payable only as a priority claim under Section 64-a-(4) of the Bankruptcy Act, and is subject to the payment of expenses of administration and the liens fixed and determined herein. It is not necessary to determine at this time the validity and amount of such claim [84] since the funds in the estate will be insufficient to pay the expenses of administration and such liens.

## XVIII.

The County of Orange, State of California, by and through its County Assessor, filed herein on August 22, 1942, its claim for personal property taxes in the sum of \$670.20, covering personal property of the bankrupt located in Orange County, California. This claim is to be disregarded since it is covered by the claim of \$723.81 of Orange County hereinabove referred to.

## XIX.

The State of California, by and through its State Franchise Tax Commissioner, filed herein its claim for minimum franchise corporation taxes for the fiscal year 1943-1944 in the sum of \$25.00. This claim arose during the course of the bankruptcy proceedings and is entitled to be paid pro rata as an expense of administration pursuant to the provisions of Section 62-a of the Bankruptcy Act. The balance due thereon, as of January 15, 1944, is \$26.25, plus interest thereon thereafter at the rate of 6% per annum until paid.

## XX.

The State of California, by and through its Department of Employment, filed herein its claim for unemployment reserve taxes for the fiscal year 1943-1944 in the sum of \$34.60. This claim arose by reason of transactions during the course of the bankruptcy proceedings and is entitled to be paid pro rata as an expense of administration pursuant to provisions of Section 62-a of the Bankruptcy Act. The balance due, as of January 15, 1944, is the sum of \$40.60, plus interest on the sum of \$34.60 thereafter at the rate of 6% per annum until paid.

## XXI.

On December 23, 1943, the said Referee signed, filed and entered an Order herein allowing and ordering paid out of the [85] estate forthwith the total sum of \$6,929.83 as expenses of administration of the type and character hereinbefore referred to. There will not be sufficient funds in the estate wherewith to pay such expenses of administration, and such valid liens of the State of California, and of the Universal Consolidated Oil Co. herein provided for. There will be sufficient money in the estate to pay said expenses of administration so allowed, and the tax liens of the State of California hereinbefore referred to, and a substantial sum in connection with the mortgage lien of the Universal Consolidated Oil Co. hereinbefore referred to. There will be other expenses of administration of the same type and character which will, necessarily, be allowed and paid before the closing of this case. There will not be left any funds on hand wherewith to pay any valid liens of the United States of America for taxes, or any debts entitled to priority of payment pursuant to Section 64-a of the Bankruptcy Act other than expenses of administration, or any claims of general creditors against the bankrupt estate.

## Conclusions of Law.

## I.

The State of California has a valid first lien upon the funds now in the hands of the Trustee in Bankruptcy in the sum of \$3,634.22, as of January 15, 1944, plus interest thereon thereafter at the rate of 6% per annum until paid.

## II.

The Universal Consolidated Oil Co., a corporation, has a valid second lien upon such funds, in the total sum of \$11,234.78, as of January 15, 1944, plus interest thereon thereafter at the rate of 5% per annum until paid. This amount of \$11,234.78 includes the sum of \$750.00 to compensate Faries & McDowell for their legal services in connection with the foreclosure of the mortgage held by the said corporation above referred to, and its defense in these [86] proceedings. Said sum of \$750.00 should be added to and become a part of the mortgage debt and the payment thereof secured by said mortgage the same as the principal and interest of the said note.

## III.

Both said first and second valid liens are subject to the payment of expenses of administration herein fixed and allowed by the court upon hearing, after due notice to the parties in interest, which arise out of the costs and expenses of the preservation of the property affected by such liens, its liquidation and reduction to cash, the determination of the status and relativity of the liens asserted upon such cash, and the proper distribution of said cash among the persons entitled to the same.

## IV.

No further consideration need be given to the validity or amount of any tax liens asserted upon the funds of the



estate by the United States of America, unless it ultimately appears that there will be sufficient funds in the estate to pay all such expenses of administration and said first and second liens of the State of California and the Universal Consolidated Oil Co. in full and leave a surplus on hand.

Order.

Pursuant to the foregoing Findings of Fact and Conclusions of Law, It Is Hereby Ordered And Decreed that:

(1) The State of California holds a valid first lien upon the funds now in the hands of the Trustee in Bankruptcy in the sum of \$3,634.22, as of January 15, 1944, plus interest thereon thereafter at the rate of 6% per annum until paid.

(2) The Universal Consolidated Oil Co., a corporation, holds a valid second lien upon such funds in the sum of \$11,234.78, as of January 15, 1944, plus interest thereon thereafter at the rate of 6% per annum until paid. [87]

(3) Both the said first and the said second lien are subject to the payment of the expenses of administration fixed by the court herein, after hearing upon due notice to the parties herein, which arise out of the costs and expenses of the property affected by such liens, its liquidation and reduction into cash, the determination of the status and relativity of the liens asserted upon such cash, and the proper distribution of said cash among the persons entitled to the same. If the assets of the estate are insufficient to pay such liens and such expenses, then such expenses shall first be paid, next the said first lien of the State of California, and then the balance remaining to the Universal Consolidated Oil Co. in connection with its said second lien.



(4) No further consideration will be given to the validity or amount of any tax liens asserted upon the funds of the estate by the United States of America, unless it ultimately appears that there will be sufficient funds in the estate to pay all such expenses of administration and said first and second liens of the State of California and the Universal Consolidated Oil Co. in full.

Dated: February 2nd, 1944.

Ben E. Tarver,  
Referee in Bankruptcy. [88]

The foregoing Findings of Fact, Conclusions of Law, and Order, are hereby approved as to form, pursuant to General Rule 7 of this Court:

GRAINGER & HUNT,  
by Reuben G. Hunt,  
Attorneys for Trustee in Bankruptcy,  
FARIES & McDOWELL,  
by McIntyre Faries,  
Attorneys for Universal Consolidated Oil Co.,  
Eugene Harpole,  
Special Attorney for the United States of America,  
Internal Revenue Department,  
Joel E. Ogle,  
County Counsel, Orange County, California,  
ROBERT W. KENNY,  
Attorney-General,  
by R. S. McLaughlin,  
Deputy Attorney-General, Attorney for the  
State of California.

[Endorsed]: Filed Mar. 2nd 1944. Ben E. Tarver,  
Referee. By B. E. T.

[Endorsed]: Filed Jun 10, 1944. [89]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S ORDER.

Comes Now the United States of America, by and through its attorneys, Charles H. Carr, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the Bureau of Internal Revenue, and files this, its Petition for Review of that certain Order made and entered in the above entitled proceeding by the Referee in Bankruptcy on the 2nd day of March, 1944, subordinating the payment of all the tax claims of the United States except that claim for \$107.10 relating to the year 1943 to those of the State of California for \$3,634.22, and that of Universal Consolidated Oil Company for \$11,234.78, which Order reads as follows:

(Findings of Fact, Conclusions of Law and Order appearing at this place in the Petition for Review is the same as the Findings of Fact, Conclusions of Law and Order appearing at P. 60 of the Transcript of Record so is not repeated.) [90]

In this, its Petition for a Review of said Order of March 2, 1944, the United States of America alleges that the Referee in Bankruptcy erred in the said Order in the following respects:

1. The Referee in Bankruptcy erred in subordinating the tax liens of the United States which were in existence before the date of bankruptcy and secured payment to it of the then assessed gasoline taxes for the months of October, 1941 to March, 1942, inclusive, in the aggregate amount of \$28,824.90, to the liens of the State of Califor-

nia securing payment to it of 1939 and 1940 franchise taxes, for the reason that said tax liens of the United States were specific whereas liens of the State of California securing the 1939 and 1940 franchise taxes were mere general inchoate liens.

2. The Referee in Bankruptcy erred in holding and finding that the cooling tower located on the Pathfinder property and the oil and gasoline tanks located upon the El Camino property were fixtures of the El Camino property and therefore covered by and subject to the mortgage of the Universal Consolidated Oil Company for the reason that the evidence before the Referee disclosed that said cooling tower and storage tanks were in no way affixed to the land of El Camino Refining Corporation in a manner that would constitute them fixtures under the laws of the State of California.

3. The Referee in Bankruptcy erred in failing and refusing to find and hold that the tax liens of the United States securing payment of its gasoline taxes assessed against El Camino Refining Corporation for the months of October, 1941 to March, 1942, inclusive, were superior to the liens of the State of California securing payment of its 1939 and 1940 franchise taxes and to the lien of the Universal Consolidated Oil Company with respect to the proceeds realized from the sale of said cooling tower located upon the Pathfinder property and the gasoline and oil storage tanks located upon the El Camino Refining Company property, for the reason that the evidence before the Referee disclosed that the tax liens of [91] the United States were specific liens while those for the State of California were merely general or inchoate tax liens and said evidence disclosed that said cooling tower and oil and gasoline storage tanks were not affixed to the

real property covered by the mortgage of the Universal Consolidated Oil Company, and hence, were not subject to the lien of the mortgage held by said Universal Consolidated Oil Company.

4. The Referee in Bankruptcy erred in failing to hold and find that the United States was entitled to receive payment of its gasoline taxes for the months of October, 1941, to March, 1942, inclusive, in full before the State of California was entitled to receive anything from the bankrupt estate to apply upon the 1939 and 1940 California franchise taxes, for the reason that the evidence before the Referee disclosed that the said taxes due the United States were secured by special tax liens at the time of the filing of the Petition in Bankruptcy herein, while the taxes due the State of California have never been secured by anything but a general or inchoate lien.

Dated this 8th day of April, 1944.

Charles H. Carr—E. H.  
CHARLES H. CARR,  
United States Attorney.

E. H. Mitchell—E. H.  
E. H. MITCHELL,  
Assistant United States Attorney,  
Eugene Harpole,  
EUGENE HARPOLE,  
Special Attorney, Bureau of Internal Revenue.

[Endorsed]: Filed April 10th, 1944. Ben E. Tarver,  
Referee, by B. E. T.

[Endorsed]: Filed Jun 10, 1944. [92]

[Title of District Court and Cause.]

REFEREE'S AMENDMENTS TO CERTIFICATE  
ON REVIEW.

The undersigned Referee in Bankruptcy, to whom was referred by the Court the above-entitled case for administration, hereby, pursuant to an Order of Court made herein on the hearing of the Review on July 24, 1944, respectfully presents herewith his Amendments to his Certificate on Review:

On March 3, 1944, the Referee made an Order herein determining the relativity of tax liens of the United States of America, and the State of California, and the lien of a mortgage held by the Universal Consolidated Oil Company, a corporation. Thereafter a Petition for a Review of such Order by the Judge was filed by the United States of America. The Referee then prepared and filed his Certificate on Review. The Review then came on for hearing before the Judge on July 24, 1944, at which time the Judge directed that the said Certificate on Review be re-referred to the Referee for amendments thereof in the particulars hereinafter stated.

1. The following portion of lines 7-10, page 3, of the said Certificate on Review is deleted:

"The amount of these State taxes was fixed and determined by the State of California prior to May 12 1942, the date of the commencement of this proceeding."

The following is inserted in lieu thereof:

"The bankrupt corporation filed its California Franchise Tax return for the taxable years 1939 and 1940, reporting its computation of income received during the income years of 1938 and 1939 and paid the taxes shown to be due for the taxable years 1939 and 1940

by said return. Thereafter and on January 3, 1941 the California Franchise Tax Commissioner under the provisions of Section [93] 25 of the Act (Act 8488 of Deering's General Laws for 1937) determined that additional income had been received and additional amounts of taxes were due and gave due notice to the bankrupt that the returns filed by the bankrupt had been examined and the correct amount of taxes determined by the Commissioner and that he proposed to assess additional taxes in specified amounts, giving the details of the proposed additional assessments and the method of computing the same. Thereupon the bankrupt filed a protest with the California Franchise Tax Commissioner. On March 12, 1942, the time of the commencement of the above-entitled proceeding under Chapter X of the Bankruptcy Act, said protest was pending for determination before the California Franchise Tax Commissioner. Thereafter and on August 13, 1942, the California Franchise Tax Commissioner redetermined the tax liability and reduced the amount of the additional taxes proposed in the said notices of January 3, 1941."

(Note: The change is made in subdivision (1) which comes after the following sentence in the first part of the Referee's Certificate "I—Statement of the Case": "The lien claims asserted against these funds were three.")

2. The following portion of lines 25-32, page 10, and lines 1-3, page 11, of the said Certificate on Review is deleted:

"The exact amount of these taxes were fixed and determined at a higher figure by the State of California prior to the commencement of this proceeding,



and on or about January 3, 1941. Thereafter the taxpayer protested the amount. On August 13, 1942, and after the commencement of this proceeding, the taxpayer was notified by the State of California that its protest was allowed in part and the tax originally fixed in said sum of \$1,406.12, for the calendar year 1939, and for the calendar year 1940 the sum of \$1,446.24. The said taxes bear interest at the rate of 6% per annum from the date of their accrual until paid."

The following is inserted in lieu thereof: [94]

"The bankrupt corporation filed its California Franchise Tax return for the taxable years 1939 and 1940, reporting its computation of income received during the income years 1938 and 1939 and paid the taxes shown to be due for the taxable years 1939 and 1940 by said returns. Thereafter and on January 3, 1941 the California Franchise Tax Commissioner under the provisions of Section 25 of the Act (Act 8488 of Deering's General Laws for 1937) determined that additional income had been received and additional amounts of taxes were due and gave due notice to the bankrupt that the returns filed by the bankrupt had been examined and the correct amount of taxes determined by the Commissioner and that he proposed to assess additional taxes in specified amounts, giving the details of the proposed additional assessments and the method of computing the same. Thereupon the bankrupt filed a protest with the California Franchise Tax Commissioner. On March 12, 1942, the time of the commencement of the above-entitled proceeding under Chapter X of the Bankruptcy Act, said protest was pending for determination before the California Franchise Tax

Commissioner. Thereafter and on August 13, 1942, the California Franchise Tax Commissioner reetermined the tax liability and reduced the amount of the additional taxes proposed in the said notices of January 3, 1941. The State taxes bear interest at the rate of six percent per annum, until paid, from March 15, 1939, and March 15, 1940, respectively. The said California tax law is also known as the Bank and Corporation Franchise Tax Act of the State of California."

(Note: The change is made near the middle of the Referee's Certificate on Review and appears under subdivision 3 under "III—Summary of Evidence.")

3. At the end of paragraph No. 3 of the "Summary of Evidence" the following is inserted:

"The said California tax law, section 11-(a) thereof, defines the words "income year" as follows: [95]

'The term "income year," as herein used, means the calendar year or the fiscal year ending during such calendar year, upon the basis of which the net income is computed herein. "Income year" includes, in the case of a return made for a fractional part of a year, the period for which such return is made.'

"The said California tax law, Section 11-(b) thereof, defines the words "taxable year" as follows:

'The term "taxable year," as herein used, means the calendar year, or the fiscal year ending during such calendar year, for which the tax is payable. A "taxable year" may constitute a period of twelve months or of less duration.'

"The said California tax law, Section 4-(7) thereof, states that the taxes due under Section 4, corpora-

tion and franchise taxes, shall accrue on the first day of the "taxable year" as defined in Section 11 of said California tax law."

(See, in connection with the foregoing amendments to the Referee's original Certificate on Review, Trustee's Exhibits Nos. 1 and 2 received in evidence by the Referee and sent up to the Judge in connection with such Certificate.)

Dated: This 5th day of August, 1944.

BEN E. TARVER

Referee in Bankruptcy.

The foregoing amendments to the Referee's Certificate on Review are hereby approved as to form:

REUBEN G. HUNT

REUBEN G. HUNT,

of Grainger and Hunt,

Attorneys for Trustee

CHARLES H. CARR—E.H.

United States Attorney

By EUGENE HARPOLE

EUGENE HARPOLE,

Attorney for United States of

America [96]

McINTYRE FARIES

McINTYRE FARIES,

of Faries and McDowell,

Attorneys for Universal Con-

Consolidated Oil Company

JOHN L. NOURSE

JOHN L. NOURSE,

Deputy Attorney-General,

Acting for Robert W. Kenny,

Attorney-General of California

[Endorsed]: Filed Aug. 11, 1944. [97]

In the District Court of the United States  
Southern District of California  
Central Division

No. 40,599-BH In Bankruptcy

In the Matter of

EL CAMINO REFINING COMPANY,

a corporation,

Bankrupt.

ORDER AFFIRMING ORDER OF REFEREE

Ben E. Tarver, a Referee in Bankruptcy of this Court, having made and entered herein on March 3, 1944, in the above-entitled matter pending before him, an Order fixing and determining the status and priority of certain tax liens asserted by the United States of America and the State of California against the funds of the estate of the above-named bankrupt and a mortgage lien asserted against said funds by Universal Consolidated Oil Company, a corporation, and thereafter the United States of America having filed herein a Petition for a Review of said Order by a Judge of the above-entitled Court, and the said Referee having thereafter filed herein his Certificate on Review and his Amendments to such Certificate, and the said Review having come on regularly for hearing before the above-entitled Court, Division of Judge Ben Harrison thereof, and having been argued and submitted to the Court for decision, the United States of America having been represented by Eugene Harpole on behalf of Charles H. Carr, United States District At-

torney for the Southern District of California, and the State of California having been represented by R. S. McLaughlin and John L. Nourse on behalf of Robert W. Kenny, Attorney-General of the State of California, and the Universal Consolidated Oil Company having been represented by McIntyre Faries on behalf of Faries & Mc-

Dowell, and Paul W. Sampsell, the Trustee in Bankruptcy herein, having been [98] represented by Reuben G. Hunt on behalf of Grainger and Hunt,

It Is Hereby Ordered that the said Order of the said Referee made and entered herein on March 3, 1944, be and the same is hereby affirmed.

It Is Hereby Further Ordered that the Findings of Fact and Conclusions of Law of the said Referee contained in his said Order of March 3, 1944, be and the same are hereby adopted by the above-entitled Court as its own Findings of Fact and Conclusions of Law in connection with said Order so affirmed.

Dated: This 7 day of September, 1944.

Ben Harrison

District Judge [99]

The foregoing Order is hereby approved as to form:

Reuben G. Hunt

REUBEN G. HUNT,

of Grainger and Hunt,

Attorneys for Trustee

CHARLES H. CARR—E. H.

United States Attorney.

By EUGENE HARPOLE.

Attorney for United States of  
America

McIntyre Faries

McINTYE FARIES,

of Faries and McDowell,

Attorneys for Universal

Consolidated Oil Company

John L. Nourse

JOHN L. NOURSE,

Deputy Attorney-General,

Acting for Robert W. Kenny,

Attorney-General of California

Received copy of the within Order this 5th of September, 1944.

Eugene Harpole,

Attorney for United States.

Order entered Sep. 7, 1944. Docketed Sep. 7, 1944.  
Book C. O. No. 27, page 615. Edmund L. Smith, Clerk,  
by Murray E. Wire, Deputy.

[Endorsed]: Filed Sep. 7, 1944. [100]



[Title of District Court and Cause.]

ORDER FOR FILING TRUSTEE'S EXHIBITS ONE  
AND TWO SPECIFIED IN REFEREE'S  
AMENDED CERTIFICATE.

The above entitled matter came on for hearing before me on July 24, 1944 upon the Government's Petition for a Review of the Referee's Order subordinating its tax claims to the claims of the State of California for 1939 and 1940 franchise taxes. The State of California appeared by John L. Nourse, Assistant Attorney General of the State of California; Universal Consolidated Oil Company appeared by McIntyre Faries, Esq., its attorney; the Trustee in Bankruptcy, Paul W. Sampsell, appeared by Reuben G. Hunt, his attorney; the Government appeared by Eugene Harpole, Special Attorney, Bureau of Internal Revenue. In the course of the hearing it developed that the Referee in Bankruptcy had failed to send up the Trustee in Bankruptcy's exhibits 1 and 2, consisting of notices of additional franchise tax proposed to be assessed, No. 27,985 and 27,986 issued by the Franchise Tax Commissioner of the State of California under date of January 3, 1941, and of notice of action of the Franchise Tax Commissioner upon the taxpayer's protest to said notices of additional franchise tax. The latter notices being dated August 13, 1942. Copies of these exhibits acknowledged to be true [101] by all counsel present, were handed me during the course of the hearing. The Referee in Bankruptcy was thereupon directed to prepare and file an amendment to his Certificate on Review. He prepared

such a Certificate dated August 5, 1944, which was filed with the Clerk of this Court on August 11, 1944. The final paragraph of said amended certificate recites as follows:

“(See, in connection with the foregoing amendments to the Referee’s Original Certificate on Review, Trustee’s Exhibits Nos. 1 and 2 received in evidence by the Referee and sent up to the Judge in connection with such certificate.)”

It appears from the files of this Court that the Referee failed to send up said Trustee’s Exhibits 1 and 2 with either his original Certificate on Review, or the amendment thereof. Duplicates of these exhibits have been presented from the files of counsel for the Trustee in Bankruptcy.

It Is Therefore Ordered that the Clerk of this Court file the proffered copies of Trustee’s Exhibits 1 and 2 as of August 11, 1944, the date on which the Referee’s Amendment to his Certificate on Review was filed herein.

Dated: this 6th day of October, 1944.

Ben Harrison  
District Judge

[Endorsed]: Filed Oct. 6, 1944. [102]

[TRUSTEE'S EXHIBIT NO. 1]

No. 27986

STATE OF CALIFORNIA  
Office of  
FRANCHISE TAX COMMISSIONER  
Sacramento

Notice of additional  
franchise tax proposed  
to be assessed

El Camino Refining Company,  
3970 Medford Avenue,  
Los Angeles, Calif.

130331

Date: January 3, 1941

Bank and Corporation Franchise Tax return for the income year ended December 31, 1939 disclosing tax liability for the taxable year ended December 31, 1940, as transmitted by the above corporation has been examined and the correct amount of tax determined by the Commissioner, and it is proposed to assess an additional tax in the amount of \$2 052 58. The details of the proposed additional assessment and of computing said tax are set forth below.

Amount of tax must be made payable and transmitted to the Franchise Tax Commissioner by certified check or money order.

Interest must be added at six per cent per annum from the due date, March 15, 1940, to the date of payment.

Item 39	Net income per form 105	\$42 717 04
15	Compensation of officers:	
	As shown, \$68 458 33; should be,	
	\$24 000 00*	44 458 33

24	Deductible depreciation:		
	As shown, \$13 916 04; should be,		
	\$7,885 47*		6 030 57
26	Legal expense disallowed*		1 000 00
35	Deductible Dividends:		
	As shown Nil; should be \$174 38		-174 38
	Standard		
	Oil of		
	Calif. \$220 00 12.53%		27 57
	Universal		
	Consol.		
	Oil 400 00 36.702%		146 81
	\$620 00		\$174 38
	Revised Net Income		\$94 031 56
61	4%		3761 26
	Total tax assessed		3761 26
	Previously assessed		1708 68
	Additional tax		2052 58

[Written]: (180) Revised CAT CC 8/13/42

\*As disclosed by Federal audit.

This notice of additional franchise tax proposed to be assessed is forwarded to the taxpayer whose name appears hereon in accordance with the provisions of the Bank and Corporation Franchise Tax Act, Section 25.  
No. 40624

Interest

AB

As Called for Above Must Be Included  
in Remittance

Chas. J. McColgan

Franchise Tax Commissioner

By CAT [103]

STATE OF CALIFORNIA  
Office of  
FRANCHISE TAX COMMISSIONER  
Sacramento

Notice of additional  
franchise tax proposed  
to be assessed  
El Camino Refining Company,  
3970 Medford Avenue,  
Los Angeles, Calif.

130331

Date: January 3, 1941

Bank and Corporation Franchise Tax return for the income year ended December 31, 1938 disclosing tax liability for the taxable year ended December 31, 1939, as transmitted by the above corporation has been examined and the correct amount of tax determined by the Commissioner, and it is proposed to assess an additional tax in the amount of \$2 214 50. The details of the proposed additional assessment and of computing said tax are set forth below.

Amount of tax must be made payable and transmitted to the Franchise Tax Commissioner by certified check or money order.

Interest must be added at six per cent per annum from the due date, March 15, 1939, to the date of payment.

Item 39	Net income per form 105	\$20 973 90
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15	Officers' compensation:	
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As shown	\$64 849 98; should be,	
	\$20 000 00*	

44 849 98

A reasonable allowance for compensation of officers under Section 8(a) would appear to be \$20 000 00. Deduction in excess, deemed to be a distribution of net income.

35	Deductible dividends:	
	As shown, \$Nil; should be, \$23 34	-23 34
	Dividends are deductible only to the extent that the income of the declaring corporation has been included in the measure of the tax imposed by the Bank and Corporation Franchise Tax Act.	
	Standard Oil Co. of Calif.—	
	33.346% Deductible	
	(\$70 00 x 33.346%)	
24	Deductible depreciation:	
	As shown, \$17 069 79; should be, \$6,533 92*	10 535 87
		<hr/>
	Revised Net Income	\$76 336 41
61	4%	3 053 46
	Total tax assessed	3 053 46
	Previously assessed	838 96
	Additional tax	2 214 50

[Written]: (180) Revised CAT CC 8/13/42

\*As disclosed by Federal audit

This notice of additional franchise tax proposed to be assessed is forwarded to the taxpayer whose name appears hereon in accordance with the provisions of the Bank and Corporation Franchise Tax Act, Section 25.

No. 40797

Interest

AB

As Called for Above Must Be Included  
in Remittance

Chas. J. McColgan

Franchise Tax Commissioner

By CAT

[Endorsed]: Filed Aug. 11, 1944. [104]



[TRUSTEE'S EXHIBIT NO. 2]

[Written]: Trustee's Exhibit 1—8/31/43 J.W.

[Crest]

STATE OF CALIFORNIA  
Office of  
FRANCHISE TAX COMMISSIONER  
Sacramento

Notice of Action of Franchise Tax  
Commissioner Upon Taxpayer's  
Protest

El Camino Refining Company  
3970 Medford Avenue  
Los Angeles, California

130331

Dated at Sacramento, California  
August 13, 1942

You Are Hereby Notified, That pursuant to the terms of Section 25 of the Bank and Corporation Franchise Tax Act and the protest which you filed complaining of the computation and levy of your tax by the Franchise Tax Commissioner under said act as disclosed by return filed for the income year beginning January 1, 1939 and ended December 31, 1939, as set forth in Notice of Additional Franchise Tax Proposed to be Assessed, No. 27986, dated January 3, 1941, in the amount of \$2 052 58,

The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:

In accordance with the information submitted to this office, tax liability has been redetermined in accordance with the following computation:

Item 39	Net income per form 105	\$42 717 04
15	Compensation of officers, as shown \$68 458 33; should be *\$36 000 00	32 458 33
24	Deductible Depreciation, as shown \$13 916 04; should be *\$11 043 97	2 872 07
	*Based on B. T. A. decision.	
26	Legal expense disallowed	1 000 00
35	Deductible dividends	-174 38
		<hr/>
	Revised Net Income	\$78 873 06
	4%	3 154 92
	Total tax assessed	3 154 92
	Previously assessed	1 708 68
	Revised additional tax	1 446 24

Interest has accrued on the deficiency at the rate of 6% per annum from March 15, 1940.

[Written]: 606.34 MD

138

Chas. J. McColgan

Franchise Tax Commissioner

By CAT

CAT:MD

cc - Latham & Watkins [105]

[Written]: Trustee's Exhibit #II—8/31/43 J.W.

[Crest]

STATE OF CALIFORNIA  
Office of  
FRANCHISE TAX COMMISSIONER  
Sacramento

Notice of Action of Franchise Tax  
Commissioner Upon Taxpayer's  
Protest

El Camino Refining Company  
3970 Medford Avenue  
Los Angeles, California

130331

Dated at Sacramento, California  
August 13, 1942

You Are Hereby Notified, That pursuant to the terms of Section 25 of the Bank and Corporation Franchise Tax Act and the protest which you filed complaining of the computation and levy of your tax by the Franchise Tax Commissioner under said act as disclosed by return filed for the income year beginning January 1, 1938 and ended December 31, 1938, as set forth in Notice of Additional Franchise Tax Proposed to be Assessed, No. 27985, dated January 3, 1941, in the amount of \$2 214 50,

The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:

In accordance with the information submitted to this office, tax liability has been redetermined in accordance with the following computation:

Item 39	Net income per form 105	\$20 973 90
15	Compensation of officers, as shown \$64 849 98; should be *\$36 000 00	28 849 98
24	Deductible Depreciation, as shown \$17 069 79; should be *\$10 743 38	6 326 41
	*Based on B. T. A. decision.	
35	Deductible dividend	-23 34
	Revised Net Income	\$56 126 95
	4%	2 245 08
	Total tax assessed	2 245 08
	Previously assessed	838 96
	Revised additional tax	1 406 12

Interest has accrued on the deficiency at the rate of 6% per annum from March 15, 1939.

[Written]: 808.38 MD

138

Chas. J. McColgan  
Franchise Tax Commissioner

By CAT

CAT:MD

cc - Latham & Watkins

[Endorsed]: Filed Aug. 11, 1944. [105-A]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, a creditor and tax claimant in the above-entitled bankruptcy proceeding, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Southern District of California, dated September 7, 1944, affirming the Order entered by Referee in Bankruptcy, Ben E. Tarver, on March 3, 1944, wherein it was held that the claims and liens of the United States for Federal gasoline taxes were subordinate to the claims and liens of the State of California for franchise taxes. The order hereby appealed from was entered September 7, 1944. [106]

Dated: October 6. 1944.

Charles H. Carr,—E. H.

CHARLES H. CARR,

United States Attorney

E. H. Mitchell,—E. H.

E. H. MITCHELL,

Assistant United States Attorney

Eugene Harpole

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue

Attorneys for Appellant

[Endorsed]: Filed & mailed copies to Reuben G. Hunt, McIntyre Faries & Robert Kenny, Atty. Gen., Oct. 6, 1944. [107]

[Title of District Court and Cause.]

APPELLANT'S AMENDED STATEMENT OF  
POINT TO BE URGED UPON APPEAL.

The appellant by this, its amended statement of points to be urged upon appeal from the Order of the above-entitled Court dated September 7, 1944, states that it intends to rely upon the following points in its said appeal:

I.

That the District Court and the Referee in Bankruptcy erred in subordinating the tax liens of the United States which were in existence before the date of bankruptcy and secured payment to it of the then assessed gasoline taxes for the months of October, 1941 to March, 1942, inclusive, in the aggregate amount of \$28,824.90, to the liens of the State of California, securing payment to it of 1939 and 1940 franchise taxes, for the reason that said tax liens of the United States were [108] specific, whereas the liens of the State of California securing the 1939 and 1940 franchise taxes were mere general inchoate liens.

II.

That the District Court and the Referee in Bankruptcy erred in failing to hold and find that the United States was entitled to receive payment of its gasoline taxes for the months of October, 1941 to March, 1942, inclusive, in full before the State of California was entitled to receive anything from the bankrupt estate to apply upon the 1939 and 1940 California franchise taxes, for the reason that the evidence before the Court and the Referee in Bankruptcy disclosed that the said taxes due the United States were secured by specific tax liens at the time of the filing of the petition in bankruptcy herein, while the



taxes due the State of California have never been secured by anything but a general or inchoate lien.

### III.

The District Court and the Referee in Bankruptcy erred in allowing interest to Universal Consolidated Oil Company, subsequent to the date of the adjudication in Bankruptcy, upon the debt due it and secured by a mortgage upon the real property of the bankrupt, El Camino Refining Company, a corporation.

### IV.

The District Court and the Referee in Bankruptcy erred in subordinating the tax liens of the United States, which were in existence before the date of bankruptcy and secured payment to it of the then assessed gasoline taxes for the months of October, 1941 to March, 1942, inclusive, in the aggregate amount of \$28,824.90, to the payment of interest accrued, after the date of adjudication of El Camino Refining Company, a bankrupt, upon the debt due Universal Consolidated Oil Company from the bankrupt and secured by a mortgage upon the bankrupt's real property. [109]

### V.

The District Court and the Referee in Bankruptcy erred in allowing interest to Universal Consolidated Oil Company upon the debt due it from the bankrupt and secured by a mortgage upon the bankrupt's real property, after said Universal Consolidated Oil Company had consented that the trustee in bankruptcy might sell said mortgaged real property.

### VI.

The District Court and the Referee in Bankruptcy erred in subordinating the tax liens of the United States, which

were in existence before the date of bankruptcy and secured payment to it of the then assessed gasoline taxes for the months of October, 1941 to March, 1942, inclusive, in the aggregate amount of \$28,824.90, to the payment of interest accrued, after Universal Consolidated Oil Company had consented that the Trustee in Bankruptcy might sell the real property of the bankrupt upon the debt due said Universal Consolidated Oil Company from El Camino Refining Company and secured by a mortgage upon the said bankrupt's real property.

#### VII.

The District Court and the Referee in Bankruptcy erred in allowing interest to Universal Consolidated Oil Company, upon the debt due it from the bankrupt and secured by a mortgage upon the bankrupt's real property, after the date said real property had been sold by the Trustee in Bankruptcy with the consent of the mortgagee, Universal Consolidated Oil Company.

#### VIII.

The District Court and the Referee in Bankruptcy erred in subordinating the tax liens of the United States which were in existence before the date of bankruptcy and secured payment to it of the then assessed gasoline taxes for the months of October, 1941 to March, 1942, [110] inclusive, in the aggregate amount of \$28,824.90, to the payment of interest accrued, after the real property of the bankrupt had been sold by the Trustee in Bankruptcy with the consent of Universal Consolidated Oil Company, the mortgagee, upon the debt due Universal Consolidated Oil Company from El Camino Refining Company and secured by a mortgage upon said bankrupt's real property.

IX.

The District Court and the Referee in Bankruptcy erred in allowing attorneys' fees to counsel of Universal Consolidated Oil Company, the mortgagee.

Dated: this 3d day of November, 1944.

Charles H. Carr—E. H.

CHARLES H. CARR,

United States Attorney

E. H. Mitchell—E. H.

E. H. MITCHELL,

Assistant United States Attorney

George M. Bryant

GEORGE M. BRYANT,

Assistant United States Attorney

Eugene Harpole

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue.

Received copy of the within this 3rd day of November, 1944.

Robert W. Kenny,

Attorney General

Per L. M. A.

Attorney for Appellees.

Received copy of the within Appellant's Am. St. etc. this 4rd day of Noember, 1944.

Reuben G. Hunt, (M. K. F.)

Attorney for Bankrupt

Received copy of the within this 3 day of November, 1944.

Faries & McDowell

By McIntyre Faries

Attorney for Universal Cons. Oil Co.

[Endorsed]: Filed Nov. 4, 1944. [111]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 115 inclusive contain full, true and correct copies of Petition for Reorganization of a Corporation under Chapter X of the Bankruptcy Act; Order Approving Petition and Continuing Debtor in Possession; Order Adjudging Debtor Bankrupt and Directing that Bankruptcy be Proceeded With; Referee's Certificate on Review; Petition of Trustee for Determination of Tax and Labor Claims and Demands; Order to Show Cause; Amended Claim of Franchise Tax Commissioner of the State of California; Claim of United States for Taxes; Statement of the Nature of Tax Claims of the Collector of Internal Revenue; Return of the State of California in Response to Order to Show Cause Issued August 11, 1943; Answer to Order to Show Cause; Letter dated September 20, 1943; Closing Brief of the State of California; Findings of Fact, Conclusions of Law and Order; Petition for Review of Referee's Order; Referee's Amendments to Certificate on Review; Order Affirming Order of Referee; Order for Filing Trustee's Exhibits One and Two Specified in Referee's Amended Certificate; Trustee's Exhibits 1 and 2; Notice of Appeal; Appellant's Amended Statement of Points to be Urged upon Appeal; Appellant's Amended Designation of Record on Appeal and Order re Time to Docket Appeal which constitute the

record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 22 day of November, 1944.

[Seal]

EDMUND L. SMITH,  
Clerk,

By Theodore Hocke,  
Chief Deputy Clerk.

[Endorsed]: No. 10932. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Paul W. Sampsell, Trustee in Bankruptcy of the Estate of El Camino Refining Company, State of California and Universal Consolidated Oil Company, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 24, 1944.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10932

In the Matter of

EL CAMINO REFINING COMPANY,  
a corporation,

Bankrupt.

UNITED STATES OF AMERICA,

Appellant,

- v -

PAUL W. SAMPSELL, Trustee in Bankruptcy, STATE  
OF CALIFORNIA and UNIVERSAL CONSOLI-  
DATED OIL COMPANY,

Appellees.

STATEMENT OF POINTS RELIED UPON ON  
APPEAL

The appellant states that it intends to rely in its appeal from the Order of the United States District Court dated September 7, 1944, upon the points mentioned in the amended statement of points relied upon by appellant, found at pages 100 to 103 of the Transcript of Record on said Appeal, inclusive.

Dated: this 21st day of November, 1944.

Charles H. Carr—E. H.  
CHARLES H. CARR,  
United States Attorney

E. H. Mitchell—E. H.  
E. H. MITCHELL,  
Asst. United States Attorney



George M. Bryant—E. H.  
GEORGE M. BRYANT,  
Asst. United States Attorney  
Eugene Harpole  
EUGENE HARPOLE,  
Special Attorney  
Bureau of Internal Revenue  
Attorneys for Appellant.

Received a copy of the within Statement of Points this  
21st day of November, 1944.

Robert W. Kenny  
Attorney General  
John L. Nourse  
Deputy  
Attorney for State of California

Received copy of the within Statement of Points this  
21st day of November, 1944.

Faries & McDowell  
By McIntyre Faries  
Attorney for Universal Consolidated  
Oil Company.

Received copy of the within Statement of Points this  
21st day of November, 1944.

Reuben G. Hunt (MKF)  
Attorney for Trustee in  
Bankruptcy.

[Endorsed]: Filed Nov. 24, 1944. Paul P. O'Brien,  
Clerk.

